

BEFORE THE
ILLINOIS COMMERCE COMMISSION

GRIDLEY TELEPHONE CO.) DOCKET NO.
) 04-0180
)
Petition for Suspension or Modification)
of Section 251(b)(2) requirements of the)
Federal Telecommunications Act pursuant)
to Section 251(f)(2) of said Act; for)
entry of Interim Order; and for other)
necessary relief.)

Springfield, Illinois
April 1, 2004

Met, pursuant to notice, at 1:30 P.M.

BEFORE:

MR. JOHN ALBERS, Administrative Law Judge

APPEARANCES:

MR. DENNIS K. MUNCY
306 West Church Street
Champaign, Illinois 61820

(Appearing on behalf of Various
Petitioners)

MR. GARY LLOYD SMITH
1204 South Fourth Street
Springfield, Illinois 62703

(Appearing on behalf of Various
Petitioners)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Ln. #084-002710

1 APPEARANCES:

(Cont'd)

2 MR. TROY A. FODOR
3 Law Office of Troy A. Fodor, P.C.
4 913 South Sixth Street
5 Springfield, Illinois 62703

6 (Appearing on behalf of Petitioner
7 Tonica Telephone Company)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1

I N D E X

2

WITNESSESDIRECT CROSS REDIRECT RECROSS

3

None.

4

5

6

7

8

9

10

I N D E X

11

EXHIBITSMARKEDADMITTED

12

None.

13

14

15

16

17

18

19

20

21

22

PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Numbers 04-0180, 04-0193, 04-0236 and 04-0300. These petitions concern Gridley Telephone Company, Glasford Telephone Company, Shawnee Telephone Company and Tonica Telephone Company, respectively.

May I have the appearances for the record, please.

MR. MADIAR: On behalf of Staff of the Illinois Commerce Commission, Eric M. Madiar, M-A-D-I-A-R, Tom Stanton, S-T-A-N-T-O-N, 160 North LaSalle, Suite C-800, Chicago, Illinois 60601, phone number (312) 793-2877.

MR. MUNCY: Your Honor, Dennis K. Muncy, 306 West Church Street, Champaign, Illinois 61820. I am entering an appearance on behalf of Gridley Telephone Company in Docket 04-0180 and an appearance in the petition of Shawnee Telephone Company in Docket 04-0236.

MR. FODOR: Troy Fodor, business address 913 South Sixth Street, Springfield, Illinois, entering

1 an appearance in the Tonica docket on behalf of
2 Tonica Telephone Company.

3 MR. SMITH: Judge, my name is Gary Lloyd Smith.
4 My business address is 1204 South Fourth Street,
5 Springfield, Illinois. I am appearing on behalf of
6 Glasford Telephone Company in 04-0193.

7 JUDGE ALBERS: Thank you. Let the record
8 reflect that there are no others wishing to enter an
9 appearance.

10 All of the petitioners seek the suspension
11 or modification of Section 251(b)(2) requirements of
12 the Federal Telecommunications Act. They seek the
13 suspension or modification pursuant to Section
14 251(f)(2) of the Act and also request interim relief
15 if such relief is necessary.

16 We are here today for purposes of
17 scheduling in these matters and taking care of any
18 preliminary issues that exist at this time.

19 Prior to going on the record we discussed
20 at least initially some concerns that Staff had
21 regarding interim relief. Mr. Madiar, could I ask
22 you to repeat for the record those concerns?

1 MR. MADIAR: Sure, Your Honor. On behalf of
2 Staff we would oppose the Petitioner's request for
3 interim relief at this time on two grounds. First
4 that there is no jeopardy posed by the May 24, 2004,
5 date, and that the Petitioners would not be
6 irreparably harmed since they claim to have not
7 received a specific request for number portability
8 from another carrier. And, second, on the face of
9 the petitions themselves they fail to demonstrate a
10 likelihood of success on the merits.

11 Just with respect to the first point, it is
12 Staff's position that the FCC's rules and orders are
13 clear that a carrier is not obliged to provide
14 number portability until it receives a specific
15 request. And the Petitioners in these dockets have
16 not -- have indicated they have not received a
17 specific request. They have indicated they received
18 some correspondence perhaps or no correspondence, or
19 in the case of Tonica, which is 04-0300, have taken
20 the affirmative position that even though they have
21 received correspondence, that correspondence does
22 not constitute a specific request.

1 As a result, it is Staff's position that no
2 interim relief is necessary until there is jeopardy
3 attached with a specific request for the May 24,
4 2004, date.

5 MR. SMITH: Judge, I respectfully disagree and
6 I believe there is a distinction without a
7 difference. As you are aware, there are five other
8 cases that are still pending, awaiting entry of an
9 order that addressed this LNP issue out of the St.
10 Louis MSA. I represented Alhambra in one of those
11 dockets which was 03-0732.

12 Now, as Mr. Madiar indicated earlier, the
13 request -- I don't believe he did this time -- but
14 in the off-the-record discussion he indicated that
15 the status conference was held after the FCC's due
16 date, thereby creating some urgency or irreparable
17 harm. For us to wait until after May in order to
18 enter an interim order seems to me to be a futile
19 act, hardly worthy of addressing. I mean, there is
20 no reason to wait for the time to pass before
21 addressing the concerns of an interim order. So I
22 think that's just --

1 MR. MADIAR: Can you get closer to the
2 microphone? We can't hear you up here.

3 MR. SMITH: Sure. I think -- I wanted to say
4 that I think it is ridiculous to wait until after
5 May 24 to address the interim order issue to draw a
6 parallel to the other five cases.

7 Now, Mr. Madiar raises a different issue
8 when he says that the parties have to have received
9 a bona fide request in order to get interim relief.
10 That is diametrically opposed to the position that
11 the Staff took in the other five cases. You
12 specifically asked at the end of those proceedings,
13 Judge, if it made any difference, and Mr. Madiar --
14 I am paraphrasing what he said -- he said no, gave a
15 fuller explanation, but that was the bottom line
16 answer. Somewhat in reliance upon that, I filed
17 petitions on behalf of several other phone companies
18 addressing this May 24 upcoming date. The petitions
19 that I filed do not allege any of the matters that
20 Mr. Madiar has referred to. There may be a
21 different circumstance with other companies, but it
22 is not mentioned, whether a bona fide request was

1 received or not received in the petitions that I
2 filed. I intended to address them in the testimony.

3 However, I think if we have to go through
4 some gamesmanship in determining whether there is a
5 bona fide request or not, then I think we need to
6 address that right away. Mr. Hoagg on behalf of the
7 Staff in those other five cases concluded that there
8 was a bona fide request for each of those five
9 companies. The companies that have filed here, I
10 think with very few exceptions, have received a
11 blanket form of correspondence from Verizon Wireless
12 back in May and November. I have shared that
13 correspondence with Mr. Madiar yesterday. I faxed
14 those to him so he has those for the clients that I
15 represent. I think everyone else here has received
16 the same sort of correspondence.

17 Now, we can tilt at windmills and determine
18 whether or not those were bona fide requests or not.
19 We can debate whether or not they are required. But
20 we seem to have addressed that issue previously in
21 those earlier five dockets, and I think everybody
22 believed that we were going to afford similar

1 treatment for the other LECs that are out there that
2 are coming in for this interim relief.

3 Mr. Madiar has talked about the rules are
4 clear and that you have got to receive a bona fide
5 request. I don't think the issue is quite so clear
6 at all. The FCC's order seems to discuss a
7 different conclusion. So I think the way this is
8 shaping up is we are going to have this legal issue
9 on whether or not a bona fide request is a
10 prerequisite to getting interim relief or any relief
11 at all. And if we are going to have to do that, we
12 are going to have to have a very expedited schedule,
13 I think, and address that issue right away.

14 I respectfully disagree with what he said.
15 I think we have decided this at this point and need
16 to move on further beyond that and grant interim
17 relief to these companies.

18 MR. MADIAR: Your Honor, can I respond to
19 Mr. Smith, and then if Mr. Muncy and Mr. Fodor
20 wanted to speak, I can have an opportunity to
21 respond to their comments, rather than having the
22 inability to have something fresh in my mind in

1 terms to respond to?

2 JUDGE ALBERS: That's fine. Why don't you go
3 ahead and respond to Mr. Smith now?

4 MR. MADIAR: Okay. Just to clarify, there is a
5 huge difference between these cases and the cases
6 from the first five, because there was a November 24
7 date in which the original five carriers would have
8 had to comply with the FCC's LNP requirement. They
9 filed petitions on November 21, all five of them.
10 We had our first date on December 4. So if you look
11 at just the date and if they had bona fide requests
12 and they do, each of those original five petitions
13 indicated the receipt of correspondence, then there
14 was potentially jeopardy attaching to those five
15 carriers. So Staff was willing to grant the interim
16 relief at that point without waiving its rights
17 because there was potentially jeopardy attaching at
18 that point, and to allow Staff the opportunity to
19 look at the correspondence which, like the original
20 five petitions and the petitions currently before
21 this Commission, did not include the correspondence.
22 So Staff then had an opportunity to review it and

1 testified that they thought those requests were bona
2 fide.

3 So in this case here there is no jeopardy
4 attached because the date May 24 has not passed,
5 unlike the November 24 date. So to whatever extent
6 Mr. Smith or the other carriers felt that they had a
7 done deal or some type of free ride with the rain of
8 new cases. Each case is to be unique and it is to
9 be evaluated based upon its circumstances. And the
10 burden of proof is not on Staff to prove up the
11 case. It is upon each carrier to do so. And that's
12 all Staff is looking to do, is look at the petitions
13 on their face, what materials are included, and from
14 Staff's point of view, without the inclusion or some
15 type of affirmative statement by the carriers that
16 they received a bona fide request, the May 24 date
17 for interim relief is not necessary.

18 In terms of having to have a specific
19 request for ultimate relief, that's a separate
20 matter. That's all I have to say at this point.

21 JUDGE ALBERS: Let me just ask a couple of
22 questions of the attorneys for the companies here

1 just so the record is clear. It is my understanding
2 that your clients are strictly asking for interim
3 relief regardless of the ultimate outcome of this.
4 Until a final order is entered, they are just asking
5 for interim relief so they cannot worry about having
6 to provide LNP.

7 MR. SMITH: That's correct.

8 MR. MUNCY: That's correct.

9 MR. SMITH: Without prejudice to the ultimate
10 issue.

11 JUDGE ALBERS: And you accept that after a
12 final order is entered, the Commission may require
13 you to provide LNP.

14 MR. SMITH: Yes.

15 MR. MUNCY: Yes.

16 JUDGE ALBERS: Okay. I just want to make sure
17 that's clear on the record.

18 Mr. Madiar, are you at all concerned that
19 having the interim order would somehow predispose
20 the ultimate outcome?

21 MR. MADIAR: No, it is not an issue of that.
22 It's an issue as to whether they have met the legal

1 sufficiency to get the interim relief.

2 JUDGE ALBERS: Okay. And you are saying then
3 that essentially the absence in your opinion of a --
4 the absence of the implementation date having
5 passed, they have not met the legal requirements or
6 the legal requirements have not been satisfied.

7 MR. MADIAR: Yes. They need to make it -- this
8 is sort of a unique situation where the carriers are
9 actually in the cat bird seat to make the May 24
10 date an operative date or not. And one way perhaps
11 they could do that is amend their petitions and
12 affirmatively state that they have received a bona
13 fide request. Then that May 24 date would be an
14 operative date.

15 JUDGE ALBERS: So in the absence of a bona fide
16 request, at least on the face of the petitions, the
17 fact that May 24 has not come yet is the reason you
18 oppose interim relief, is that correct?

19 MR. MADIAR: Right.

20 JUDGE ALBERS: Okay. And, Mr. Muncy, did you

21 --

22 MR. MUNCY: I guess Mr. Smith wants to say

1 something. I will let him.

2 MR. SMITH: With regard to one of those issues,
3 this May 24, this is artificial. It is impractical.
4 We could ask for this and you could then have that
5 ordered entered on May 24 or 25 or 23, instead of
6 May 27 or April 25 or something. So this is really
7 an artificial barrier. I think it would behoove
8 everybody to get this out of the way so that we can
9 get to -- and have this threshold issue taken care
10 of, so we can get to the end game on this since we
11 have got a 180-day clock. That's all I wanted to
12 say.

13 JUDGE ALBERS: Go ahead.

14 MR. MUNCY: Judge Albers, on behalf of Gridley
15 and Shawnee, my reasoning is somewhat different than
16 the argument that Mr. Smith made. I mean, Gridley,
17 for example, filed its petition on March 1, 2004,
18 and Shawnee could have filed sometime shortly
19 thereafter. And as you are well aware, there is
20 some 30 or so cases that have been filed that are
21 now going to need to be heard.

22 I don't disagree with Mr. Madiar's

1 recitation of what the FCC rules are about bona fide
2 requests. I mean, the reason that -- as you said
3 earlier when we were off the record, when we filed
4 these dockets, I guess I was hoping in my mind that
5 they would be concluded and final orders entered by
6 May 24, so that the issue of an interim order was
7 really off the table. However, recognizing the
8 number of cases that are going to need to be done
9 and the short time between March 1 and May 24, we
10 requested interim relief as really a matter of
11 convenience.

12 I don't think that this Commission needs to
13 be addressing and that you need to address whether
14 there has been or hasn't been a bona fide request.
15 Each of these companies have a right to seek a
16 suspension. I think by entering an interim order,
17 if this is going to continue on beyond May 24, all
18 you are doing is providing -- the Commission is
19 providing some protection, pending a final order
20 from this Commission, from some wireless carrier
21 complaining and maybe going to the Federal
22 Communications Commission and saying that a certain

1 telephone company is violating their rules and not
2 providing local number portability, because they
3 argue before them that they have made a valid
4 request and that the May 24 date was applicable.
5 That's the reason that we sought the entry of an
6 interim order.

7 I would have hoped that the Commission
8 Staff would realize that it was in that spirit that
9 it was asked, and there was not any substantial
10 criteria that needed to be met in order to do that.
11 The Gridley petition, for example, does allege
12 Gridley has received correspondence and other
13 documents from wireless carriers in regard to
14 wireline to wireless number portability that could,
15 in light of the FCC's November 10 order, be
16 considered to be requests for a wireline to wireless
17 local number portability.

18 I don't want to pass and make the judgment
19 and I don't think this Commission needs to pass in
20 these dockets on whether there has been or hasn't
21 been a bona fide request to each of the companies.
22 They have the right to seek the suspension. There

1 is a six-month time clock. The six-month time clock
2 runs beyond May 24, in the event May 24 is the
3 applicable date for anybody.

4 I was hoping that this would be a non-issue
5 in this case. That's the reason we requested -- I
6 don't want one of my clients having a complaint
7 filed against them before the FCC that says that
8 they haven't provided local number portability while
9 this docket is pending. That's my response.

10 JUDGE ALBERS: Before I hear from Mr. Madiar,
11 what was the date that Gridley filed again?

12 MR. MUNCY: We filed March 1.

13 JUDGE ALBERS: And that I believe was the first
14 of the second batch.

15 MR. MUNCY: I believe. I was trying to check
16 that this morning when I was working on a schedule,
17 and I believe that was the first one.

18 JUDGE ALBERS: I think that's the lowest
19 document I have of all of the ones I have been
20 assigned.

21 MR. MADIAR: That is what Staff has as well.

22 JUDGE ALBERS: And, Mr. Madiar, did you want to

1 respond individually to Mr. Muncy?

2 MR. MADIAR: Just one thought in terms of
3 responding to Mr. Muncy. He talked about the fact
4 that he didn't want to have his clients in jeopardy
5 of somebody going to the FCC and saying that his
6 client was not complying with the FCC's requirement
7 because a bona fide request was received. The
8 inverse is also true, in that Mr. Muncy would be
9 able to go forward to the FCC, much like Egyptian
10 did, and actually seek relief from the FCC and make
11 a determination of whether in fact a bona fide
12 request was received. So it can go either way. But
13 it doesn't -- as far as I am concerned or Staff's
14 position, that type of argument doesn't address the
15 fact of the May 24 date not being an operative date
16 unless a request was received.

17 JUDGE ALBERS: Mr. Madiar -- well, let's first
18 hear from Mr. Fodor, if you have any comments.

19 MR. FODOR: Basically, just so my record is
20 clear, I will adopt the arguments made by Mr. Smith
21 and Mr. Muncy. I don't have a lot to add. One
22 thing that he said that the other two gentlemen have

1 not addressed, he is applying a standard for an
2 injunction to this case, and he is saying that we
3 have not alleged sufficient evidence to show a
4 likelihood of succeeding on the merits, and I
5 believe that's not true. Our petitions in these --
6 I haven't read these other gentlemen's petitions,
7 but I can tell you that Tonica's is very similar to
8 the ones that I previously filed for Home Telephone
9 Company and Harrisonville.

10 I realize we have supplemented those other
11 dockets with additional testimony, but as the
12 records in those other cases were marked heard and
13 taken, as the Staff has taken policy positions on
14 these issues, I believe there is a likelihood of
15 proceeding on the merits in these cases. So that
16 should be dismissed as a red herring.

17 And the only real issue is the point that
18 Mr. Madiar is raising about whether or not we have
19 received bona fide requests. I agree with Mr. Muncy
20 that we should not have to decide that in this
21 Commission proceeding.

22 But Mr. Madiar's statements are circular.

1 He says on the one hand we haven't admitted that we
2 have gotten them, therefore, we are not entitled for
3 relief. That's not the correct legal standard, Your
4 Honor. The fact is the letters are out there. They
5 are substantially identical to the ones that were
6 received in the other five cases. Staff took the
7 position in the other five cases that they were bona
8 fide requests. We have no control over whether
9 somebody will decide that they are in fact bona fide
10 requests, and we are making the same requests in
11 these cases as we made in the other cases.

12 JUDGE ALBERS: Thank you. And, Mr. Madiar, do
13 you want to respond to Mr. Fodor?

14 MR. MADIAR: Yeah, just to the fact that let's
15 look at the petitions here, we don't have any copies
16 attached to the petition of what correspondence was
17 received. The other cases are different because we
18 did get that evidence which is evidence. There is
19 none of that evidence here. So to make a parallel
20 to what happened over there, he could make that
21 parallel but there is nothing on the face of the
22 record at this point as to what that correspondence

1 is, aside from what Mr. Smith has provided to me
2 yesterday afternoon, and that at the same time is
3 not at this point a part of that petition. It may
4 be advisory or informational.

5 Now, I think at this point I don't want to
6 beat a dead horse with the arguments that I have
7 made, and that's all I have at this time.

8 MR. FODOR: If I could respond, Your Honor?

9 JUDGE ALBERS: Go ahead.

10 MR. FODOR: If Mr. Madiar would like to have an
11 evidentiary hearing next week and have us bring in
12 our letters, that would provide us time for you to
13 make a decision on whether or not we have got bona
14 fide requests, even though I don't think we should
15 have to do that, and then the issue would be gone.
16 My point is it is a scheduling issue, the fact that
17 the evidence is not filed yet. Thank you.

18 JUDGE ALBERS: Okay. Mr. Madiar, would I be
19 correct to believe that Staff would feel differently
20 about the interim relief had the petitions in these,
21 this newer batch of modifications, waiver requests,
22 included similar documentation as the previously

1 alluded to five that we have already dealt with?

2 MR. MADIAR: I think that would have been
3 helpful. At the same time, I think -- or in the
4 alternative if they would have had a statement in
5 their petitions that they did in fact receive bona
6 fide requests.

7 JUDGE ALBERS: And then had they actually made
8 those statements or provided that documentation,
9 Staff's only remaining concern then, and correct me
10 if I am wrong, but Staff's only remaining concern
11 then would be the passing of the May 24 date?

12 MR. MADIAR: I mean at this point, yeah. With
13 respect to getting the interim relief, if we look at
14 it in two ways, if they would have just included the
15 correspondence with the petitions, then we think at
16 that juncture it would be suitable to this
17 Commission to require the carriers to send copies of
18 their petitions to any carriers that they received
19 correspondence from and give those wireless carriers
20 an opportunity to file something. And that way we
21 would have the benefit of those interested parties
22 on the issue of the receipt of a request.

1 In the alternative, if they should simply
2 just amend the or had in their petition without
3 including documentation that they in fact received a
4 bona fide request, then I think the issue of
5 granting interim relief would probably be right,
6 because they are making an affirmative statement
7 that they have jeopardy for the May 24 date, and
8 Staff might be inclined to go along with that.

9 JUDGE ALBERS: Okay. I am going to ask you to
10 help me out here, all of you. In the first five, I
11 recollect there being the references in the
12 petitions to having received requests from wireless
13 carriers, and I recollect there being the actual
14 attachments to the petitions reflecting those
15 correspondences from the wireless carriers, is that
16 correct?

17 MR. SMITH: That's correct, Judge.

18 MR. MADIAR: No, that is not correct. Maybe
19 not for all. We actually sent out an initial DR on
20 that to get that information.

21 JUDGE ALBERS: Okay. Well, that's why I am
22 asking.

1 MR. SMITH: There was a reference to the
2 receipt of correspondence, and in the testimony the
3 details of the documentation was disclosed.

4 JUDGE ALBERS: Okay. So they were attached to
5 the testimony then?

6 MR. SMITH: That's correct.

7 JUDGE ALBERS: And that was filed after
8 November 24.

9 MR. MADIAR: That was filed on January 9, Your
10 Honor.

11 MR. SMITH: After the interim relief had been
12 granted.

13 MR. MUNCY: Judge, I would like to emphasize
14 again that I don't believe that this Commission
15 needs to decide whether or not there have or haven't
16 been bona fide requests. Whether Mr. Madiar and
17 Staff counsel believe that something is or isn't a
18 bona fide request is really not the point. The FCC,
19 if they have a complaint that somebody was in
20 violation of the order, they are the ones that would
21 make that decision, and I don't know that our
22 opinion in Illinois necessarily decides the matter.

1 JUDGE ALBERS: Well, and I think, like
2 Mr. Smith, I think I also recollect at the hearings
3 that Staff did not believe that the existence of
4 bona fide requests somehow impeded the Commission's
5 ability to issue or grant the temporary suspensions.
6 Mr. Madiar, do you share that recollection?

7 MR. MADIAR: That wasn't as to the issue of
8 granting interim relief. It was to the issue of
9 granting ultimate relief.

10 JUDGE ALBERS: Right, that's what I have, yes,
11 I agree with that.

12 MR. MADIAR: That's a distinction that Staff
13 submitted at that time. It was different from the
14 issue of granting interim relief.

15 MR. SMITH: If I may, Judge, that makes it even
16 more compelling. I mean, the ultimate issue -- to
17 now bring this back and create a higher standard for
18 interim relief than the ultimate relief is the
19 height of absurdity. Now, Judge, what Mr. Madiar is
20 asking, what he is trying to do, he is trying to get
21 to us make a judicial admission. And the fact of
22 the matter is this, there is an ambiguity in the

1 law. The order that the FCC issued in November
2 seems to indicate that we have to be on board on May
3 24. The rules that they have that he has alluded to
4 give us a six-month lead time on a bona fide
5 request. We are caught in a legal conundrum. We
6 ought not to have to thrash that out here to get
7 interim relief. That's our point.

8 JUDGE ALBERS: I understand everyone's points.
9 I think that as a practical matter where I am left
10 is that I have someone opposing a request for
11 interim relief. Given that interim relief could
12 only be granted through an interim order, I
13 therefore find myself having to prepare proposed
14 interim orders resolving this question.

15 MR. SMITH: If you tell us where you are coming
16 out, we might be able to help you out on the time
17 frame.

18 JUDGE ALBERS: Time frame regarding?

19 MR. SMITH: Well, you said proposed. We could
20 waive a proposed order. That's what you were
21 talking about, right?

22 JUDGE ALBERS: Right, but I would imagine that

1 regardless, whoever didn't like my idea might want
2 to file some exceptions to it.

3 MR. SMITH: Given the time frame, I don't know.
4 You might want to ask or share with us, because as
5 Mr. Muncy said at the beginning of this status
6 conference, we do have some tight schedules that we
7 have to really address in this case.

8 JUDGE ALBERS: Well, Mr. Madiar, does that have
9 any appeal to you?

10 MR. MADIAR: I didn't hear Mr. Smith's last
11 part, I am sorry.

12 MR. SMITH: What I was asking is can we waive
13 commenting on a proposed interim order.

14 MR. MADIAR: What do you mean? I am a little
15 confused at what you are looking.

16 JUDGE ALBERS: I think to save some time,
17 Mr. Smith is wondering if the parties would all be
18 willing to waive briefs on exceptions and briefs to
19 replies to exceptions, and have me simply send up an
20 order to the Commission. Is that what you are
21 asking?

22 MR. SMITH: That's correct, Your Honor.

1 MR. MADIAR: Just hold on a second.

2 (Pause.)

3 MR. MADIAR: Well, it just seems to Staff that
4 we don't know what the order is going to say. And
5 if it is something that, you know, didn't go our
6 way, we wouldn't have a shot at trying to make our
7 case.

8 MR. SMITH: That's correct. We have got bigger
9 fish to fry in the docket here and so we were hoping
10 for matters of expediency at this point.

11 JUDGE ALBERS: Well, I think based on
12 Mr. Madiar's comment, I think I am going to be
13 issuing a proposed interim order.

14 MR. SMITH: Will you at least tighten the
15 comment time frames?

16 JUDGE ALBERS: Oh, yeah.

17 MR. SMITH: Thank you.

18 MR. MUNCY: Judge, however it is easiest for
19 you to do, I mean we have got to figure out a way
20 that in the event of something like this you don't
21 need to write 30 orders.

22 JUDGE ALBERS: That's what I am thinking about

1 right now. And why don't we go off the record here
2 just to explore some different procedural
3 alternatives.

4 (Whereupon there was
5 then had an
6 off-the-record
7 discussion.)

8 JUDGE ALBERS: Back on the record. When we
9 went off the record we were discussing how to make a
10 proposed interim order easier. All of the parties
11 are in agreement that I can consolidate all of the
12 cases concerning the requested local number
13 portability requirement suspensions for purposes
14 only at this point of an interim order. If anyone
15 has any other thoughts on that, please say so now.

16 MR. SMITH: No, I think we all -- that was one
17 of the few things we have agreed on.

18 MR. MADIAR: I am just a little confused,
19 Judge. You were saying we have all agreed to do
20 what?

21 JUDGE ALBERS: Simply for purposes of issuing
22 proposed interim orders in this case, nobody had any

1 -- it is my understanding nobody objected to
2 consolidating them just for the proposed interim
3 order purpose.

4 MR. MADIAR: I am sorry, no, you are absolutely
5 correct, absolutely correct, Judge.

6 JUDGE ALBERS: Okay. I just wanted to get that
7 on the record. And I will also take this time to
8 note that the cases that I called this afternoon
9 have not been consolidated for any other purpose but
10 were just being called together for administrative
11 efficiency.

12 While we were off the record, we also noted
13 that in order to set a schedule in this matter it
14 may be prudent to try to resolve some concerns with
15 Staff discovery requests, and with that in mind we
16 are returning to the record to discuss certain
17 objections that carriers may have to various
18 discovery requests, and I am working from the DR
19 issued in docket 04-0200.

20 Wait a minute. Off the record.

21 (Whereupon there was
22 then had an

1 off-the-record

2 discussion.)

3 JUDGE ALBERS: Back on the record. Strike
4 that. I am working from a DR which is demonstrative
5 of all DRs submitted in these dockets and any
6 differences shall be noted.

7 I will start with question one.

8 MR. STANTON: This is Tom Stanton.

9 Preliminarily, we would like to object to the
10 process of doing this on the record. We think that
11 we are entitled to responses to these data requests,
12 and if the parties object to that, they can put
13 their objections in the written requests and then it
14 is up to us to determine whether we want to follow
15 up and file a motion to compel. So we think the
16 process, as typically in discovery is, the process
17 is we send out questions, they answer or they say
18 why they cannot answer, why they will not answer,
19 and then it helps us to determine whether we are
20 going to seek further action from those parties.
21 Typically, there would be filed a motion to compel.

22 So just to start, we would object to that

1 we are having to go through these one by one on the
2 record here today at the first status hearing.

3 JUDGE ALBERS: Just so everyone is clear, by
4 doing this I am not saying there is anything wrong
5 with any of the questions at this point in time. I
6 am merely doing this to expedite the process in
7 light of the time line that we have under the
8 federal statute. We have eaten up an awful lot of
9 time, it seems like, trying to determine whether or
10 not through the traditional method whether certain
11 questions should not be answered.

12 It is merely my intent this afternoon that,
13 starting with the beginning of these questions, if
14 someone has an objection to them, you know, please
15 state so and your reason for it. Staff will have an
16 opportunity to respond as to why that question
17 should be answered in their opinion. And after
18 that, I will attempt to make a ruling on whether or
19 not that question should be answered.

20 MR. STANTON: Okay. Just one other point, Your
21 Honor. We would reserve the right to withdraw a
22 particular question and make that question after or

1 submit that question to the parties after testimony
2 is filed. So with that caveat noted, we are ready
3 to go.

4 JUDGE ALBERS: At this point in time I don't
5 have a problem with that.

6 MR. SMITH: I don't object to whatever he wants
7 to withdraw, and if he wants to address it down the
8 road later, we will do it then.

9 JUDGE ALBERS: That's my thought as well. If
10 there is still an objection at that point, we will
11 have to revisit it.

12 MR. SMITH: I have no objection to the first
13 two questions.

14 JUDGE ALBERS: Mr. Fodor, Mr. Muncy?

15 MR. FODOR: No objection.

16 MR. MUNCY: I want to make a comment about that
17 and a comment generally as we get into the thing.
18 Again, I am taking -- this is just an observation
19 about the process we are in. Remember all of the
20 proceedings that we are in and the number of these
21 that have to be done as they affect anything else.
22 I am representing 23 different companies and thus

1 some of the companies serve as few as a hundred
2 access lines, have like one employee, and to the
3 extent that I make arguments that something is
4 burdensome, I would like that to be taken into
5 account as well, in light of everything else that
6 has to be done.

7 In regard to Questions 1 and 2, the
8 petitions that were filed that I have filed indicate
9 the number of access lines that the companies serve,
10 and those were verified petitions. That same
11 information will be contained in the testimony. The
12 application also indicates the number of exchanges
13 and identifies the number of exchanges that each
14 company serves. I don't have any -- well, I don't
15 know why they have to ask for customers when we have
16 provided access lines. I don't really object to
17 these things, to these questions being relevant, but
18 they seem to me to be unnecessary. But those two
19 questions can be the answer. I won't pose a formal
20 objection to those two.

21 JUDGE ALBERS: So no objection to 1 and 2. And
22 I assume that includes all of the subparts? When

1 you say you have no objection to 1, that includes
2 1.0, 1.1, 1.2 and so forth?

3 MR. SMITH: There are no subparts.

4 MR. FODOR: The ones I am looking at are
5 numbered 1.01, 1.02.

6 JUDGE ALBERS: What do you know? I was
7 expecting to turn the page and see 2, 3.

8 MR. SMITH: It gets better later on.

9 JUDGE ALBERS: 1.01 then?

10 MR. SMITH: I have no objection to the first
11 question about how many access lines by exchange.
12 It is easier to answer them than to go through them.
13 The rest of the subparts, the rest of 1.03, Your
14 Honor, as I am going to say for this particular data
15 request and the others that I am going to object to,
16 they are irrelevant. They are burdensome. They do
17 not lead to admissible evidence. They are not
18 directed to any of the issues that we have in local
19 number portability. The rest of 1.03 asks us to go
20 back for essentially five years and identify these
21 access lines and provide them by exchanges at year
22 end. Now, this becomes a set-up question because

1 the answers to these are used to further elaborate
2 more questions later on that get even more
3 convoluted in my view, far afield.

4 But the essence is I can't for the life of
5 me understand why my clients need to go back for
6 five years and get access line data to furnish to
7 the Staff for what we are trying to accomplish in
8 this proceeding.

9 MR. STANTON: This is Tom Stanton. I will
10 withdraw that question until the testimony.

11 JUDGE ALBERS: Okay. And just --

12 MR. STANTON: I will withdraw that question
13 now, like I said, with the reservation that once we
14 see the testimony from the different carriers, that
15 question may come back.

16 MR. MUNCY: So 1.03 is withdrawn, is that
17 right?

18 MR. STANTON: That's what we propose.

19 JUDGE ALBERS: And, Mr. Smith, -0200 is yours?

20 MR. SMITH: Yes.

21 JUDGE ALBERS: Can I right on this?

22 MR. SMITH: That can be your copy, that is

1 correct.

2 MR. STANTON: Actually, the first sentence, I
3 think Mr. Smith did not object to so what we would
4 propose withdrawing is the second sentence about the
5 previous years.

6 MR. FODOR: And the third?

7 MR. STANTON: The second sentence and the third
8 sentences.

9 JUDGE ALBERS: Okay. Everyone clear on that
10 then?

11 MR. SMITH: Yes.

12 JUDGE ALBERS: 1.04.

13 MR. SMITH: Same objection, Your Honor. This
14 goes back instead of access lines, makes it even
15 more complicated.

16 MR. STANTON: We will withdraw that second and
17 third sentences there, too.

18 MR. SMITH: Well, my objection was to all of
19 1.04.

20 MR. STANTON: Okay.

21 MR. SMITH: And the reason being, the companies
22 do have access line counts but customers are a

1 different, you know, manner of keeping, and it is
2 difficult to go back. Although it can be
3 determined, you have to go back and determine how
4 many customers had multiple access lines. Again, I
5 don't see that it goes to any issue in this case.
6 So my objection is to all of 1.04.

7 JUDGE ALBERS: Before you respond, Mr. Stanton,
8 you are concerned that one customer may have two
9 access lines or one access line might serve five
10 customers, and that's just going to -- is that your
11 concern?

12 MR. SMITH: That's my concern. And it doesn't
13 relate to any of the issues in the case. It is
14 burdensome for us to go back and figure those things
15 out for the last five years.

16 MR. FODOR: Just to clarify that, they normally
17 keep track of their records in a specific manner.
18 They are being asked to answer questions in a
19 different manner so it is going to require a manual
20 research to take their normally recorded information
21 and convert it into what's being asked.

22 MR. SMITH: That's right.

MR. MUNCY: I object to the entire question as well, and plus you have seen the cost studies. The costs were developed from a total company basis. They came down and the presentations were made in the other five cases and will be made here what the potential costs per access line was. Why we need to get off into per exchange and number of customers is beyond me. I think -- I object to all of 1.04.

JUDGE ALBERS: Okay. Mr. Stanton, do you want to respond?

MR. STANTON: Sure. Judge Albers, as I think you rightly noted, there can be a difference between the number of access lines and the number of customers. I point you to 251(f)(2)(A), the first standard. Avoid a significant adverse economic impact on users of telecommunications services generally. So while the carriers may say that they have 1,000 lines or 2,000 access lines, I think in terms of whether we are talking about users, we are talking about customers -- one second.

(Pause.)

MR. STANTON: And another issue in the case is

1 the LNP surcharge. If the carrier is required to
2 provide local number portability, a wireline to
3 wireless, the FCC allows a local number portability
4 charge, a surcharge on customers. So that's what we
5 are looking for. It is clearly relevant both to the
6 standard and to the LNP surcharge on each of the
7 customers each of these companies have.

8 JUDGE ALBERS: Has the FCC defined customers in
9 this context as individual people or as access
10 lines?

11 MR. MADIAR: This is Eric Madiar. The FCC
12 orders talk about end users and a surcharge being on
13 the end user, which for all intents and purposes is
14 a customer.

15 MR. SMITH: Per access line.

16 MR. MUNCY: The end user charge at the FCC, I
17 believe, is assessed per access line.

18 MR. SMITH: And that's the essence of it.

19 MR. MADIAR: Well, that's not necessarily true
20 because there are Centrex lines and there are
21 businesses with PBXs where they would be assessed a
22 number. I believe a PBX is five and Centrex maybe

1 another number, but it is based on -- it is not
2 necessarily based on access lines. And that's what
3 we are really interested in doing, looking to see
4 the difference between the number of access lines
5 and the number of customers. And it is clearly
6 relevant here.

7 JUDGE ALBERS: Is one of the companies'
8 concerns also that they don't simply -- you don't
9 keep track of how many individual people are served
10 by each access line or you would require --

11 MR. SMITH: We do not. As Mr. Fodor elaborated
12 earlier, we have that information but we don't keep
13 track of it. It would require going back to extract
14 this manually and to bring this out. Now, clearly
15 the impact -- access lines don't pay charges. Users
16 and customers do. I understand that. But the
17 charges are done on a per access line basis. Nobody
18 in this case even would have the audacity to propose
19 that if a customer had five access lines that that
20 customer would pay the same as somebody else with
21 one access line. It's a per access line
22 measurement. Now, this asks to go back for five

1 years on customers.

2 MR. STANTON: I thought we were talking about
3 just the first sentence.

4 MR. SMITH: I am sorry. If you withdrew the
5 rest of it, then I guess if that's what you meant to
6 do, then we are talking about the first sentence.

7 MR. STANTON: Yeah. Currently we are talking
8 about the first sentence right now.

9 MR. SMITH: You withdrew the rest of 4?

10 MR. STANTON: Yes, second and third sentences.

11 MR. MUNCY: Judge, I can't speak for all my
12 clients how their records are. I think the comments
13 that have been made about manual work having to be
14 done is true. I mean, if we are directed to do
15 this, we will do it. I am certainly not saying how
16 good of information is going to come out of this,
17 but we could do it. I do believe that it is
18 burdensome, and I really think that within the
19 context of what we are doing here, it is more
20 unnecessary than anything else.

21 JUDGE ALBERS: Is this one of the foundational
22 questions that Mr. Smith alluded to earlier, that it

1 is used later?

2 MR. SMITH: Yeah. Now, just to shed light on
3 this a little, I believe Mr. Stanton was referring
4 to PBX lines and Centrex lines. I think I can speak
5 with a high degree of confidence, these companies
6 are so small, we are not having -- we don't have
7 companies with Centrex lines. Maybe a few. I mean,
8 we are really talking about a lot -- Centrex lines
9 usually are going to encompass more lines than what
10 these companies have in their totality.

11 JUDGE ALBERS: Okay. Well, at this time I am
12 not inclined to require the companies to answer
13 this. However, if one of the later questions that
14 builds upon this seems valid, then I will go back
15 and revisit this.

16 MR. MUNCY: And that was in regard to 1.04?

17 MR. SMITH: The first sentence.

18 JUDGE ALBERS: The first sentence.

19 MR. STANTON: Your Honor, in terms of -- the
20 disadvantage to Staff is that the carriers are able
21 to build their case however they want to build their
22 case, whereas we would be prevented from building

1 our case with respect to the issues that need to be
2 proved up which the burden is upon the carriers.
3 And so we would have no ability to prove an
4 alternative theory to whether they have met the
5 elements or not.

6 And not only that, Your Honor, demand for
7 the service is going to be an issue in this case and
8 access lines don't demand services. Customers
9 demand services. In their petition they say they
10 have thousands of access lines. Well, there is not
11 a thousand customers demanding wireline to wireless
12 local number portability. We want to know how many
13 customers are out there and have them estimate what
14 the demand is going to be.

15 So clearly this idea of how many customers
16 they have is relevant, and they should know how many
17 customers that they have. These aren't giant
18 companies where they would have to go through the
19 bills one by one. These guys have to know how many
20 customers that they have. If they only have a
21 thousand access lines --

22 JUDGE ALBERS: Let me ask you this,

1 Mr. Stanton, what kind of margin of error would you
2 consider acceptable if a company were to give you a
3 total number of customers?

4 MR. STANTON: Well, they should say their
5 margin of error. I don't know. I am looking for a
6 response and they can tell me what margin of error
7 they think exists. I can't answer. I am looking
8 for responses. And then I will need to work and see
9 whether I know if I have to follow up on that
10 question. But again this is -- we are asking
11 foundational questions to try to understand these
12 companies and how they fit into this, you know, the
13 request that they are asking, and it is a basic
14 question.

15 JUDGE ALBERS: All right. You have persuaded
16 me, Mr. Stanton.

17 MR. STANTON: Just to add one thing, Your
18 Honor, they have brought up the issue of customers
19 as part of the petition, at least some of them have,
20 because they broached the issue of saying we are
21 going to do customer education and they are probably
22 going to be submitting evidence of sending out

1 mailers and the type of education that they would do
2 to their customers. So they have sort of already
3 submitted that as relevant. I guess the
4 disadvantage we are at here --

5 JUDGE ALBERS: You just -- you persuaded me, I
6 said.

7 MR. STANTON: Okay.

8 MR. SMITH: So the first -- just so I am clear
9 on your ruling, the first sentence in 1.04 is one to
10 be answered?

11 JUDGE ALBERS: Right, just the first one.

12 1.05.

13 MR. SMITH: Same objection. Now, this asks for
14 the customers, you know, broken down into all kinds
15 of different ways.

16 MR. MUNCY: In my opinion this is burdensome.
17 And I mean I hear Mr. Stanton and Mr. Madiar, but I
18 just -- I don't understand what's going on here, why
19 these kind of questions and we need to get into this
20 kind of detail when they are familiar with the kind
21 of cost study and evidence and everything that was
22 presented in the first five cases. And I think they

1 realize it, know it, but the same kind of cost
2 studies with the same kind of methodologies is going
3 to be used here, and I have no idea why we need to
4 get into this or burden people with having to answer
5 the question.

6 MR. FODOR: Actually, Your Honor, there is an
7 additional point. In connection with the last
8 question, Mr. Madiar or Mr. Stanton, I couldn't tell
9 which voice it was, talking about the surcharges in
10 the last five cases, we decided that the Commission
11 had no jurisdiction over those surcharges. Those
12 surcharges were going to be whatever the FCC
13 approved, if and when we were required to do it. We
14 were doing -- at least from my companies, we were
15 talking about company impact and then we were also
16 talking about end user impacts, and we were using
17 the access line divisions to make it a workable
18 number for folks to deal with in their testimony.
19 Breaking it down into the Centrex and the PBX and
20 the other type stuff, again, it is something that
21 would have to be done manually. It is burdensome
22 and it is not relevant. We don't need that

1 information because you are not setting the end user
2 surcharge for the LNP. It is simply a mechanism
3 that we are using to simplify how we refer to this
4 so that we can have a dollar per access line number
5 to put in the order.

6 MR. MADIAR: Your Honor, may I respond?

7 JUDGE ALBERS: Yes.

8 MR. MADIAR: This is Eric Madiar. Your Honor,
9 first thing is the other five cases were the other
10 five cases and these are these cases. In addition,
11 the parties, the carriers here, are able to
12 formulate the impact in their own way, in the way
13 they feel that best bolsters their case. We should
14 have the same opportunity to formulate the impact
15 from our perspective, and that's why it is relevant
16 to this, because there is many ways to look at it.
17 It is not one way and that's it. And if -- we have
18 some trepidation with going along with just looking
19 at the only way that's available is through the
20 carrier's way, and that would be unfair to Staff.
21 To have an alternative view, which is why Staff is
22 in this proceeding to begin with, is to present

1 whether it is reasonable from what the carriers have
2 put forth. So it is highly relevant.

3 MR. STANTON: And if I could just add to that
4 response, I believe it was Mr. Smith talked about
5 that, you know, these rural carriers are primarily
6 non-business and residential. That's what we are
7 trying to determine. We are trying to determine the
8 characteristics of these companies.

9 And I would just point out with respect to,
10 I think it was Mr. Fodor, about Centrex lines and
11 PBX lines, if the Judge will recall, the testimony
12 of these carriers in the previous five dockets, the
13 answers to those questions, how many PBX lines did
14 they have, how many PBNRI lines did they have, how
15 many -- Your Honor, they wrote down the data. So
16 perhaps maybe it is difficult for the Judge because
17 the testimony is not filed, but what we tried to do
18 here is anticipate that these are the questions that
19 we need, certainly the answers that we need, to
20 build our case. But this is information that I
21 assume, based on the past cases, that these carriers
22 are going to file.

1 MR. SMITH: Can I respond? He began his answer
2 by saying the past five cases were the past five
3 cases and these were these and you can't draw
4 parallels, but then he winds up doing that at the
5 very end of his answer. The last one, number four,
6 he argued, well, we want to know about impacts of
7 customers, not access lines, that's really
8 important. Now he is asking us to break down the
9 access lines.

10 MR. STANTON: We want both.

11 MR. SMITH: By residential, by single line, by
12 business. He made his argument in the prior
13 question. These breaking down these access lines is
14 burdensome, unnecessary, and it doesn't go to any
15 issue in the case.

16 MR. STANTON: And I will respond by it
17 absolutely goes to the issues in the case because
18 one of the standards that they are trying to meet is
19 whether providing the LNP will be called a
20 significant adverse economic impact on users. We
21 are interested in what type of user they have and
22 whether it will be a significant impact. If there

1 are a lot of business customers in their service
2 area, well, then maybe that should be a different
3 analysis than perhaps residential. This is all part
4 of information that we need to determine our case.

5 MR. SMITH: What the cost studies show was a
6 per access line across the board. That's what you
7 are going to see.

8 MR. MUNCY: Judge, perhaps -- the workpapers
9 that were submitted in the last case in connection
10 with the cost study and will be submitted at least
11 from my clients in this case has, in one of the
12 workpapers, has a category where it says monthly
13 lines and it has three different categories, PBX,
14 the one I am looking at, zero, ISDN, PRI, zero,
15 other, sum of residential single line business,
16 multi line business and Centrex, and that's the
17 number of the company's access lines. The Staff
18 will get that information in the cost studies. I
19 would ask that, if nothing else, that this question
20 be withdrawn at this point in time. They can look
21 at what's in the cost studies and figure out whether
22 they need anything further.

1 JUDGE ALBERS: Does that have any appeal to
2 you, Mr. Madiar or Mr. Stanton?

3 MR. STANTON: Can you hang on one second?

4 JUDGE ALBERS: Sure

5 (Pause.)

6 MR. STANTON: Okay. Let me offer this
7 suggestion. It may make things go a lot easier. A
8 lot of these questions will likely be highly
9 relevant to the testimony that the companies will
10 file. You know, rather than going through some --
11 we can certainly go through the questions and the
12 objections, and what we would like to do is perhaps
13 withdraw some of these questions now. The companies
14 file testimony and if they can commit to responses
15 within two weeks or some short time frame since we
16 only have six months to do this case, and if they do
17 have objections, we can come back and do this, but
18 it may make sense to allow the company to file its
19 testimony, see what is in the testimony, and then if
20 we have any requests, we can file those requests
21 shortly after that testimony. And, again, if the
22 carriers can commit to responding to those questions

1 in a shortened time period, we would suggest two
2 weeks, rather than the traditional 28 days.

3 MR. MUNCY: From my perspective if they will
4 withdraw the entire data request, let us go ahead
5 and file our testimony, I mean as far as in response
6 to what Mr. Stanton is saying about time, I am
7 willing to work with them to expedite it. I am
8 telling you that there is a burden, not only on the
9 companies but on me as well, being able to turn
10 around this number of questions with data request
11 responses within that short period of time. I will
12 commit to responding absolutely as quickly as
13 possible, and if there were a few questions, I am
14 sure that we can respond within two weeks.

15 MR. SMITH: I share Mr. Muncy's concerns. I
16 can't commit to two weeks with something that we
17 haven't obviously seen. I would rather know where I
18 am at on these right now, if I need more time to do
19 that. But if he wants to withdraw these --

20 MR. STANTON: Let me just correct these. Let's
21 go down these quickly and let's hear your
22 objections, and if it is something we can withdraw,

1 we will do that. But just in terms of the timing,
2 let me make a point. These petitions were filed
3 roughly a month ago, the first ones. There has been
4 no testimony filed. The clock has been ticking. We
5 sent out these data requests hoping that we would
6 advance the process and get some of this
7 information, rather than waiting for what we think
8 is going to be, you know, perhaps in the testimony.
9 But we have been sitting around waiting a month so
10 there is five months left.

11 So for the companies to say how prejudiced
12 they are going to be by answering these questions
13 and how burdensome they are, you know, is
14 disingenuous.

15 JUDGE ALBERS: In fairness, I will take some
16 responsibility for there not being a status hearing
17 until one month after the first one is filed. Just
18 given my schedule, this is the soonest I could do
19 so.

20 MR. STANTON: Nothing precludes them from
21 filing testimony shortly after, on their own free
22 will, shortly after they file a petition, knowing

1 that the clock is ticking and it is only a six-month
2 clock. So, I mean, I understand, Judge, you know,
3 that the status hearing wasn't set, but clearly they
4 could have filed testimony.

5 MR. SMITH: Well, if we are going to do
6 nitpicking, this is the same interrogatory, the same
7 data requests, we saw previously and it took them a
8 month to get these things filed. Now, you know, I
9 talked with Mr. Madiar when I filed my petitions. I
10 let him know these were coming. I held my hand out
11 to try to work something out to expedite this
12 process. I got nothing but double talk, no help, no
13 assistance, so.

14 MR. MADIAR: That is absolutely false. I told
15 you --

16 MR. SMITH: Let me finish. So the data
17 requests came and these data requests --

18 JUDGE ALBERS: Wait, one at that time.
19 Mr. Smith, finish, please.

20 MR. SMITH: You know, these are the same data
21 requests that we saw previously. We are working on
22 our testimony. We are trying to get this case going

1 along. We recognize the limitations that we have,
2 and we are trying to move this process along.
3 Obviously, this case is being treated by the Staff
4 differently than the five initial cases.

5 JUDGE ALBERS: All right.

6 MR. MADIAR: And my response was Mr. Smith's
7 comment that he handed out -- held out an olive
8 branch to do something and that I gave him double
9 talk is false and ridiculous. What I told him is
10 that we would be filing the same DRs or equivalent
11 DRs, which he has admitted on the record today is
12 that that I gave him notice to what he was getting
13 into and what to expect from Staff. If he wants to
14 take the position to object, clearly he has that
15 right but he can't argue some type of latches or
16 unclean hands on the part of Staff. That's
17 ridiculous.

18 JUDGE ALBERS: Mr. Madiar, I gave you a chance
19 to respond to that because I think it was only fair
20 after what Mr. Smith said. I am not casting
21 aspersions on what you said. I am simply going to
22 say this now. Accusing each other of bad faith at

1 any level or degree is not going to get us any
2 further along on this status hearing or any of these
3 cases.

4 MR. MADIAR: I agree.

5 MR. SMITH: I agree.

6 MR. MADIAR: And I apologize to Mr. Smith. But
7 I was feeling that I had to defend my position and
8 what I had said.

9 JUDGE ALBERS: I understand. I understand what
10 Mr. Smith said and I understand what you said, and I
11 am not going to sit here and try to figure out who
12 acted better before these were filed.

13 MR. SMITH: I want to say right now that I am
14 willing to work with the Staff and everybody here to
15 try to keep the ball moving along in this process.
16 I want to communicate and I want to try to get the
17 decisions on this done as quickly as possible. To
18 the extent we can agree, terrific. To the extent we
19 can't agree, we need to get those issues presented
20 to you and get them resolved and get this case
21 moving along. I am willing to work along with
22 Staff.

1 JUDGE ALBERS: Okay. I respect and appreciate
2 that.

3 MR. MADIAR: I agree with the tenor of
4 Mr. Smith's remarks.

5 MR. STANTON: So do I.

6 JUDGE ALBERS: It seems to me that some of the
7 concern the companies have with responding to these
8 DRs is that they are working on testimony at the
9 same time they are working on DRs?

10 MR. MUNCY: Absolutely.

11 MR. SMITH: That is correct.

12 JUDGE ALBERS: Mr. Stanton, your proposal seems
13 reasonable as far as withdrawing some of these, see
14 what the testimony says and perhaps revisiting some
15 of these DRs. Because by that time the companies'
16 testimony will have been filed and Staff will be
17 preparing its testimony. Are there some DRs you
18 have in mind right now that you are willing to
19 withdraw?

20 MR. STANTON: Let's just go through. Let's see
21 which ones they are willing to answer and let's see
22 which ones they object to, and we will see what we

1 can agree on today.

2 MR. SMITH: For summary purposes we object -- I
3 object all the way through 11.

4 JUDGE ALBERS: 1.05 through 1.11.

5 MR. SMITH: And the last three.

6 MR. STANTON: And the last three, Gary?

7 MR. SMITH: That's correct.

8 MR. STANTON: 20, 21 and 22?

9 MR. SMITH: Yes.

10 JUDGE ALBERS: And, Mr. Fodor, Mr. Muncy, do
11 you have any additional ones?

12 MR. MUNCY: Give me a moment.

13 JUDGE ALBERS: Okay.

14 (Pause.)

15 MR. MUNCY: Judge, I guess I want to comment, I
16 am still a little bit concerned that we are only
17 looking at some of the data requests and not all of
18 them and that there is going to be some numbering
19 sync that causes problems or something.

20 JUDGE ALBERS: I share that concern.

21 MR. MUNCY: I agree with the ones that
22 Mr. Smith has objected to. I would certainly ask

1 that all those would be withdrawn because we have
2 objections to those. I would, however, agree that
3 at least relevant -- that the subject matter of the
4 docket are questions on the Oneida one or the one we
5 were looking at, Questions 12 through 19 certainly
6 deal with issues involved in the proceeding. I
7 would, however -- I think it would be preferable if,
8 rather than Staff withdraw those as well, allow us
9 to address the issues that we believe are
10 appropriate for us to address in our testimony and
11 in the cost studies that are in support. And if
12 that doesn't -- if they then think they need
13 additional information that are within the areas
14 covered by questions 1.12 through 1.19, that they
15 ask at a later point in time.

16 While I am willing to withdraw them, I am
17 still going to request that the companies be
18 allowed -- I be loud to work with the companies on
19 the completion of their testimony so that it can be
20 submitted and circulated to you, Your Honor, and to
21 the Staff members. In my opinion that should be the
22 priority to move the docket forward, rather than me

1 having to spend time potentially talking to 23
2 different companies about how to respond to some
3 particular facet of these data requests. But I will
4 stand on that.

5 JUDGE ALBERS: Okay. Mr. Fodor, did you have
6 any additional comment?

7 MR. FODOR: There are a couple of the
8 additional ones that Mr. Smith didn't identify which
9 I believe are asking for legal conclusions rather
10 than facts. I would generally object to that. I
11 will say that since the other gentlemen are on the
12 faster part of the track than I am, I didn't get
13 mine filed until the 25th and I was out of the
14 office, so when this was delivered on Tuesday I
15 didn't see it until this morning. I would prefer
16 that the Staff, as Mr. Muncy said, would withdraw it
17 all. If I need to identify the remaining ones that
18 Mr. Smith didn't identify and make my objections
19 now, I can. It looks to me like starting with -- I
20 am okay with 1.11. 1.12, 1.13 --

21 MR. STANTON: You skipped over 1.11.

22 JUDGE ALBERS: I think he said 1.11.

1 MR. FODOR: We certainly intend to provide the
2 information requested in 1.12 in our testimony, just
3 like I did in the other two cases of mine so I have
4 no objection to 12. 1.13, I believe it calls for
5 legal conclusions, and to the extent that I have
6 made some of the legal argument in the petition, we
7 will have the witness make some of our legal
8 position at least known in case we need briefs later
9 in his testimony. But I don't think it is
10 appropriate for a data request to ask for the
11 company to make legal conclusion. If there are
12 legal issues to be briefed and we want to have
13 prehearing briefs, I guess we can talk about that.
14 But otherwise the legal issues should stay for the
15 end with the briefs, if there are any. And I hope
16 there aren't, but.

17 STAFF ATTORNEY: Staff would be amenable to
18 withdrawing 1.13, except for the fact of the latter
19 part of it which talked about, moreover, has Oneida
20 filed with the FCC a formal challenge. That's a
21 factual question that doesn't call for a legal
22 opinion.

1 MR. FODOR: That one is going to be real easy
2 to answer. I can keep the last paragraph.

3 STAFF ATTORNEY: Okay. Appreciate that.

4 JUDGE ALBERS: Oh, yeah, moreover, Oneida
5 hasn't filed a formal FCC challenge.

6 MR. FODOR: Right. Other than the time, Your
7 Honor, 1.14 we are going to provide it in our
8 testimony so I have the same comments that Mr. Muncy
9 has trying to prepare so much in a testimony format
10 and also prepare it in a DR response format. I
11 suppose if they are going to be satisfied with a DR
12 response from me that says look at question and
13 answer 34 through 35, then I can respond to that
14 one.

15 MR. MUNCY: Judge, I have just been handed
16 another data request that is proving to me that the
17 questions are out of sync.

18 JUDGE ALBERS: I am not surprised.

19 MR. MUNCY: The question that we are
20 discussing, they are out of sync. Let's just leave
21 it at that. Since I am now only looking at two of
22 them, it is probably going to get even more complex

1 if I looked at more.

2 STAFF ATTORNEY: Which one would that be?

3 MR. MUNCY: I was looking at the Shawnee data
4 request.

5 STAFF ATTORNEY: That one is sort of unique.

6 MR. MUNCY: Well, in any event, it doesn't sync
7 up.

8 STAFF ATTORNEY: And that's because of what
9 Shawnee has done has excluded what was 1.12 in all
10 others. 1.12 in Shawnee is essentially 1.13 in all
11 of the rest.

12 MR. SMITH: So am I understanding there is one
13 less question in the Shawnee?

14 STAFF ATTORNEY: Yes, yes. I am at, on the
15 cover page it says Staff Data Request 1.01 through
16 1.021 where as all others say 1.01 through 1.22.

17 MR. MUNCY: I trust we in good faith can go
18 ahead and talk about this, but as I became aware of
19 the problem, I wanted to make sure that you were.

20 JUDGE ALBERS: No, that's fine.

21 STAFF ATTORNEY: Thanks for pointing it out,
22 Dennis.

1 JUDGE ALBERS: Well, then, Mr. Stanton and
2 Mr. Madiar, having had identified the DRs that the
3 companies would like to at least defer at this time
4 until their testimony is filed, do you have any
5 comment?

6 MR. FODOR: Excuse me, Your Honor, I have one
7 more, 1.18.

8 STAFF ATTORNEY: Why don't we just walk down
9 through the numbers?

10 JUDGE ALBERS: All right. 1.05.

11 STAFF ATTORNEY: I thought we dealt with 1.13.

12 JUDGE ALBERS: I think we have gone through
13 1.01 and 1.04, and I was moving down to 1.05.
14 That's where we left off.

15 STAFF ATTORNEY: Very good. Would you like us
16 to talk or hear their objection first?

17 JUDGE ALBERS: Well, I think we heard the
18 objection on 1.05 and I am wondering if, in light of
19 your comments earlier, if this might be one of the
20 ones you are willing to withdraw at this time.

21 STAFF ATTORNEY: Your Honor, these questions
22 are relevant because they go to the fact of the type

1 of impact that would be on the user.

2 JUDGE ALBERS: Right.

3 STAFF ATTORNEY: If you have got different
4 types of users, you know, for lack of a better
5 illustration, a senior citizen versus a small
6 business versus a medium size business, the
7 surcharge, etc., it depends on the type of lines
8 that they have. So instead of having perhaps the
9 carriers paint a picture that all of their customers
10 are senior citizens, this would give some definite
11 example to the type of customers that they do have
12 and better assessment of the significant impact.

13 JUDGE ALBERS: Mr. Madiar, I am not -- I think
14 we heard your reasons for why they should be asked
15 or answered, rather, earlier. I am just --

16 MR. MADIAR: You want to take it out?

17 JUDGE ALBERS: No, I am not telling you what I
18 want to do right now. I am asking is this one of
19 the questions that you would be willing to defer at
20 this time. That's all I am asking.

21 MR. MADIAR: Well, I guess we might be inclined
22 to do that if they are going to provide some

1 testimony to it. But if they are not going to
2 provide any testimony, we have just lost several
3 weeks.

4 JUDGE ALBERS: Well, because I believe some of
5 their concern is having to file testimony and answer
6 all of the questions at the same time, and I am sure
7 the companies will stop me if I speak out of turn
8 for them here, but I believe they indicated that
9 they would be amenable to working on some of these
10 other DRs at a later time. And if they have
11 specific objections to any of the DRs that are
12 renewed, they would raise them and then we will be
13 back here again, but.

14 STAFF ATTORNEY: Our concern is that we are
15 losing time. That if we withdraw it, this question
16 will come back after they file the testimony. They
17 are not going to be responsive to the question in
18 their testimony, we are going to lose time and then,
19 you know, it is cutting into the preparation of our
20 testimony and we only have six months, so.

21 JUDGE ALBERS: I understand the time concerns
22 here.

1 STAFF ATTORNEY: Let's do it then. Let's get a
2 ruling.

3 JUDGE ALBERS: This is probably opening a can
4 of worms, but I still have to ask. Generally, are
5 your objections, gentlemen, the same for all of the
6 remaining questions?

7 MR. SMITH: That's correct.

8 JUDGE ALBERS: And, Mr. Muncy and Mr. Fodor,
9 generally?

10 MR. FODOR: As I stated earlier, some of mine
11 are based on the fact that they are asking for legal
12 conclusions. But other than those, they would be
13 the same as what Mr. Smith has been arguing.

14 JUDGE ALBERS: And then Mr. Muncy?

15 MR. MUNCY: The only further comment, that
16 there certainly are some things unique about
17 Questions 1.07 and 1.08 that deal with companies
18 other than who the applicant is here which raised a
19 whole different set of issues and problems,
20 including they are requesting information that
21 probably can't be provided because of CPNI, FCC
22 rules to protect customers. But I mean other than

1 that, I mean, but, Judge, I plan on, once again, if
2 we are going to get rulings, that's fine. But no
3 matter how the ruling is, if we have to answer
4 anything, we have still got a timing issue about
5 what's to be done first.

6 JUDGE ALBERS: What I am contemplating here is
7 if I can, if hypothetically your objections are
8 generally the same to all of these and if Staff's
9 reasons for wanting them are the same for all of
10 these, I could leave the room for a few minutes and
11 then come back after having read all of these and
12 considered them in total.

13 MR. SMITH: My objections are that they are
14 burdensome, they are irrelevant, and I think that's
15 the same nature throughout. And dealing with them
16 on an expedited basis, I think, is the way to go,
17 especially given the lateness of the hour. I agree
18 with what Mr. Muncy has said, but I am asking for --
19 you know, any relief is better than what we are
20 looking at here. So to the extent that we can get
21 some rulings today, it will be very, very helpful.

22 JUDGE ALBERS: I intend to do so today. Staff,

1 are your reasons for wanting these answers generally
2 the same as what I have already heard?

3 STAFF ATTORNEY: From the standpoint of we
4 believe that they are relevant, yes, and to not have
5 the benefit I suppose of our explanation, I feel it
6 puts Staff perhaps at a disadvantage of not being
7 able to explain. These are questions that would
8 elicit information that would be clear, crystal
9 clear. In our view, once they file the testimony,
10 if the testimony is based on anything like the
11 previous testimony, and I believe Mr. Muncy said a
12 lot of the same information that he put in the
13 worksheet that was attached to those previous cases,
14 that they would be doing something similar in these
15 type of cases to prove that they are entitled to a
16 waiver of the LNP.

17 So we have tried to explain as best we
18 could, given that there is nothing to shoot at in
19 the testimony but this is information that we need
20 to develop our case based on the request date that
21 they have made in the petition.

22 JUDGE ALBERS: And what date is Staff asking

1 for answers to these DRs at this time?

2 STAFF ATTORNEY: Given the six-month clock and
3 we are already in the second month, we are asking
4 for two weeks.

5 JUDGE ALBERS: What date?

6 STAFF ATTORNEY: The 12th and the -- well, the
7 12th for Mr. Smith's and Mr. Muncy's, and then the
8 16th for Mr. Fodor's since he filed his petition on
9 March 25.

10 JUDGE ALBERS: And the DRs were filed?

11 MR. SMITH: Friday, 9:54 p.m. Friday evening.

12 MR. FODOR: I got mine on Tuesday.

13 MR. MUNCY: I was watching the Illinois
14 basketball game. I didn't see it when it came in.

15 JUDGE ALBERS: All right. To the extent that I
16 have any particular questions about what the reason
17 would be beyond what I have already heard, I will
18 come back and ask. But I think I have heard several
19 arguments for and against these DRs, and keeping
20 that in mind I am going to go next door and just
21 read through these individually and then come back
22 and let you know.

1 STAFF ATTORNEY: Your Honor, before we do that,
2 I just want to give you a shape of where Staff is
3 going with these DRs, especially the ones 1.05
4 through 1.08. What happens is a lot of these
5 carriers send one bill to their customers and that
6 one bill would contain internet service, long
7 distance service and what not, and so that would be
8 -- and we are looking for information to establish
9 what the average hit is on each customer which is
10 directly relevant to the significant impact upon the
11 user. Rather than doing some -- doing it with some
12 test to -- we are actually looking for actual data
13 to construct what the average bill is so we can
14 consider if an LNP surcharge is going to be
15 assessed, what kind of hit it would have on the
16 average customer or user. So I just wanted to
17 submit that.

18 JUDGE ALBERS: You are looking for the total
19 bill amount, the average? You want to try to
20 determine the average total bill amount for each
21 customer for both local, long distance and perhaps
22 internet service?

1 STAFF ATTORNEY: We are just trying to look at
2 -- if you add up the long distance part of it,
3 what's the long distance part of it, what's the
4 average internet part of it, and the number of
5 customers that have actually signed on to that
6 service because that will give you an idea of what
7 the actually average bill is. For example, Henry is
8 one that puts out its bill, not only the local
9 service, but the internet service and the long
10 distance service on one bill, and that way you get a
11 total of say maybe 50 bucks. And if you have an LNP
12 surcharge hypothetically, of course, it has
13 relevance of whether it has an economically
14 significant impact on that user. So that's where
15 Staff is coming from.

16 JUDGE ALBERS: I understand.

17 MR. MUNCY: Judge, I have got to respond to
18 that. These companies are -- some companies provide
19 billing and collection services for other companies,
20 for other kinds of services. Some don't. In fact,
21 they can be billing somebody's drug store bill on
22 there or whatever it is. That is completely

1 irrelevant of what these companies are sending out
2 bills for, for things other than the basic services
3 that they provide under the statutory criteria.

4 STAFF ATTORNEY: Your Honor, they are free to
5 argue the merits on the legal side of the question
6 to avoid its significant adverse impact on users.
7 We are looking at it from a user perspective on an
8 average basis. If they want to look at the average
9 impact upon the users of their specific companies,
10 then that's fine. But the statute is pretty clear
11 that it is significant impact on users of services,
12 so.

13 JUDGE ALBERS: Okay. Well, I understand what
14 everyone has been saying. While I am gone, I would
15 encourage all of you to discuss among yourselves any
16 potential DRs you are willing to withdraw at this
17 particular time, regardless of whether or not you
18 want to bring them up later or whether you still
19 have objections later. And if you do arrive at any
20 of those that you want to withdraw, come and get me.
21 I will be next door and it might save us some time
22 and I cannot worry about one or two more.

1 (Whereupon the hearing
2 was in a short recess.)

3 JUDGE ALBERS: Back on the record. Before I
4 discuss individual DRs, I do have one question for
5 Staff to explain why they are asking this. 1.11.

6 STAFF ATTORNEY: Yes, Your Honor.

7 JUDGE ALBERS: Could you tell me what it is you
8 are looking for with that question?

9 STAFF ATTORNEY: Sure, Your Honor. This
10 question is in specific reference to a statement
11 that is in the petitions currently. Just to give
12 you a sample, I am just pulling one of these
13 petitions, you know, out of the area and this
14 happens to be Glasford which is Mr. Smith. And they
15 make the statement -- I am trying to find where it
16 is in the petition -- okay, in paragraph 11 of the
17 petition the issue is intercarrier compensation when
18 you have to transport one of these calls to the
19 tandem of a long distance provider. And the
20 information that we are seeking, here is the
21 relevant line. I will read the two sentences.

22 "No wireless carrier has a point of

1 interconnection or numbering resources in any
2 exchange or rate center within Glasford's service
3 area. Glasford believes, based on the requirements
4 of the November 10/20/03 FCC order, that all calls
5 from Glasford wireline customers in its Glasford
6 exchange to a Glasford customer who had ported his
7 or her number to a wireless carrier would have to be
8 transported to SBC's tandem in Peoria, Illinois, for
9 delivery to wireless carriers. This at minimum
10 would involve the use of transport facilities
11 provided by Glasford and transport facilities
12 provided by SBC, as well as tandem switching
13 functions performed by SBC in Peoria."

14 So what we are looking for there is the
15 other long distance carriers that might be involved
16 and be part of this scenario, if we were going to be
17 considering these cases.

18 JUDGE ALBERS: Okay. And maybe I am missing
19 something but could you tie that in then to the
20 criteria that we look at to find out whether or not
21 the company should get the suspension?

22 STAFF ATTORNEY: Well, they are making an issue

1 of intercarrier compensation issues and that would
2 be one of the inputs they would try to put into the
3 overall calculation of an impact upon the users.
4 And we are trying to discover evidence as to, okay,
5 who are some of these other long distance carriers
6 that we are dealing with here in this specific case.

7 JUDGE ALBERS: So you are trying to identify
8 alternatives to the ones they have identified in the
9 petition? I just want to make sure I understand
10 what you are saying, that's all.

11 STAFF ATTORNEY: We think that this is relevant
12 to the petition on some of the inputs that we
13 anticipate they are going to have in their testimony
14 to the impact on the user.

15 JUDGE ALBERS: Okay. But as far as looking at
16 the three criteria, well, it is more than that
17 but --

18 STAFF ATTORNEY: Sure, sure. You can put
19 this -- they would try and argue this as being an
20 economic impact on the user and whether that would
21 be a surcharge on the users, and they would try and
22 tie the intercarrier compensation issues into that.

1 The FCC needs to decide intercarrier compensation
2 issues, where that money would fall, who would have
3 to pay it, the company which would be
4 251(f)(2)(A)(2), the burden on the company, or
5 251(a), 251(f)(2)(A)(1) which is the impact on the
6 user.

7 JUDGE ALBERS: I understand that.

8 STAFF ATTORNEY: Okay. And that's why we are
9 seeking the information. Because it is relevant to
10 the impact on either the company or the user.

11 MR. SMITH: May I try to shed a little light on
12 this?

13 JUDGE ALBERS: Sure.

14 MR. SMITH: I think, without speaking for
15 Mr. Muncy, I think that this is true in his
16 petitions as well, what this allegation states does
17 not have to do with intercarrier compensation
18 issues. This refers to the common trunks between
19 the small LECs and the tandem. There is a line that
20 comes into the meet point, and what the allegation
21 is saying is that if there is not an interexchange
22 carrier to handle that, that the LEC would have to

1 send it to the tandem over the trunks commonly owned
2 by the LEC and the tandem provider. It doesn't have
3 to do with intercarrier compensation agreements.
4 The customer picks the interexchange carrier to
5 handle that call normally for a long distance call.
6 That's what this is -- that's the situation that
7 this is referring to. This doesn't have to do with
8 dedicated toll trunks and intercarrier compensation
9 issues. So I think in all fairness he may have
10 misunderstood the nature of the allegation.

11 MR. MUNCY: Judge, can I respond?

12 JUDGE ALBERS: Go ahead.

13 MR. MUNCY: And what I am going to say, I
14 don't know, I don't want to in any way mean to
15 demean Staff and Mr. Stanton and Mr. Madiar. What
16 they just said evidences that they don't understand
17 the local exchange telephone network. This is
18 not -- when you are saying sending something to a
19 tandem, that is not because SBC is an interexchange
20 carrier. The land line network has been set up
21 where there are tandems and then end offices that
22 feed off of those.

1 The FCC order and the reason that there is
2 the discussion about transport and transiting is
3 that the FCC order says that supposedly the local
4 exchange carrier has to be able to deliver this to
5 the wireless carrier so that a call from Person A
6 who still has a land line phone in Glasford to his
7 next door neighbor who has ported his number to a
8 wireless carrier is still rated as a local call. If
9 that were to be put on the interexchange network, it
10 would be a toll call and, therefore, would not
11 comply with the FCC order. Therefore, you have to
12 use -- because the wireless carriers don't have a
13 point of presence in the small company's areas, they
14 have to use the regular telephone network which is,
15 again, the end office tandem thing to send the call
16 on a common trunk from the end office to the tandem
17 to be delivered to the wireless carrier there.

18 I mean, in short, the dedicated toll trunks
19 of interexchange carriers, whether they have them or
20 don't have them in any particular exchange of any
21 company involved in this proceeding, doesn't really
22 have to do with anything, because the FCC orders --

1 if the companies are going to comply with that,
2 while these would normally be toll calls since it
3 was being delivered outside of the area, they don't
4 have the option of using that network if they are
5 going to comply with that part of the order.

6 MR. SMITH: You are taking what was a toll call
7 and converting it into a local call, and somebody
8 has got to pay for it.

9 MR. MUNCY: Which what they said, I don't know
10 what it has got to do with your ruling, but it just
11 evidences that, well, there is some
12 misunderstanding.

13 JUDGE ALBERS: Mr. Stanton, Mr. Madiar, do you
14 want one more last word on that?

15 STAFF ATTORNEY: Your Honor, all I would say is
16 that the issue of transport and transit costs is
17 something that we know and are fairly confident the
18 carriers are going to put in their testimony like
19 that was in the last five cases. But for these
20 purposes we will go ahead and withdraw the question.

21 JUDGE ALBERS: Okay. I think with that I am
22 prepared to go through each of the questions and

1 issue a ruling regarding them. I would just start
2 off by saying that understanding the points made by
3 counsel for the carriers as well as counsel for
4 Staff, at this point in time you both make good
5 points. I also recognize that some, more than
6 others, have got a bigger burden in dealing with
7 both testimony filings and answering numerous data
8 requests all at once. I have tried to draw a
9 balance between what I believe are reasonable
10 questions to ask and the amount of time that we have
11 to deal with here. And so with that I will just
12 start at the beginning so the record is clear and it
13 is all in one place.

14 1.01 and 1.02, I don't believe anybody has
15 an objection to those, stay as is.

16 1.03, the only part that remains after
17 Staff's withdrawing part of it is the very first
18 sentence, how many access lines does Petitioner have
19 by exchange. That stands.

20 1.04, the only part that remains is how
21 many customers does Petitioner have by exchange.
22 Staff, I understand, has withdrawn the rest of that

1 question.

2 1.05, I believe this is a question that the
3 Petitioners can answer by April 12.

4 1.06, the main question, that being the
5 first sentence, I believe that can be answered by
6 April 12. As far as the subparts, though, the only
7 one that I would direct the Petitioners to answer is
8 Subpart E, the very last one. That also could be
9 answered by April 12.

10 1.07 --

11 MR. MUNCY: So the first sentence in 1.06 and
12 Sub E are to be answered and the remainder not?

13 JUDGE ALBERS: Right.

14 1.07, 1.08, 1.09 and 1.10 can also be
15 answered by April 12.

16 After that, 1.11 has been withdrawn.

17 1.12, this question appears to be something
18 that has been addressed in the testimony in the
19 prior cases, and I would anticipate it would be in
20 the carriers' interest to address it again in their
21 testimony and, therefore, I think this question can
22 be answered in the testimony.

1 1.13, beginning with that "Is it Oneida's
2 contention through that FCC cite" -- I am sorry, CFR
3 37 cite 52.23 (c).

4 MR. SMITH: It was withdrawn.

5 JUDGE ALBERS: Yes, and I agree with Mr. Fodor
6 it was asking for a legal conclusion.

7 STAFF ATTORNEY: We agree. We agreed to
8 withdraw it.

9 JUDGE ALBERS: Right. Now, the remainder of
10 that, starting with "Moreover" and through the end
11 of it, again I think that's something that would be
12 better -- well, I would anticipate would be
13 addressed in testimony and again would state that
14 that should be addressed in testimony as opposed to
15 a separate DR response.

16 1.14, again I believe this is something
17 that was addressed in testimony the first time
18 around and I believe it is appropriate to have that
19 addressed in testimony again.

20 1.15, 1.17 and 1. -- I am sorry, I am going
21 to back up there. 1.15, 1.16 and 1.17, I understand
22 Staff would ask these questions at least for now

1 based on what I have heard, but in light of the
2 burden that the companies are under to get testimony
3 filed and answer the other DRs that are already
4 identified, I think it would be appropriate to allow
5 the companies to answer these by April 21.

6 Now, with that in mind, though, I will say
7 at this point, if April 21 the companies still feel
8 that's rather soon, I am amenable to hearing
9 arguments for a few more days.

10 STAFF ATTORNEY: Did you also include 1.18,
11 Your Honor?

12 JUDGE ALBERS: 1.15, 1.16 and 1.17.

13 STAFF ATTORNEY: Okay. Very good.

14 MR. SMITH: I am going to have a hard time
15 meeting that April 12.

16 MR. MUNCY: If we are going to have to answer
17 these data requests, then I am going to have to push
18 back when the testimony can be filed. I mean,
19 that's the inner workings.

20 JUDGE ALBERS: I am willing to talk about that
21 date, the 12th date.

22 MR. SMITH: My suggestion would be, even though

1 that we have more time to answer the data requests
2 and that we get the testimony on file first, I know
3 we are sort of set up the other way, but I would
4 rather have more time on this than try to do and
5 incorporate some of this stuff in the testimony, so
6 that when we file the answers to the data requests
7 we can say, you know, see Question 23 on the
8 testimony to try to mitigate some of the load here.

9 JUDGE ALBERS: Well, I will tell you what. Let
10 me run through the rest of these.

11 MR. SMITH: I am sorry to interrupt.

12 STAFF ATTORNEY: Very good.

13 JUDGE ALBERS: We will talk about that.

14 1.18, it would seem that could be answered
15 in relatively short order and I would suggest at
16 this point that be answered on April 12.

17 1.19, again I think that's something that
18 appeared in the testimony or had appeared in the
19 testimony the first time around, and I would state
20 that should be answered in the testimony again.

21 1.20 causes me some concern and I would
22 suggest the following.

1 STAFF ATTORNEY: Your Honor, we can withdraw
2 that.

3 JUDGE ALBERS: Okay.

4 And 1.21 and 1.22, again I would group with
5 the others to be responded to by April 12.

6 Now, as I indicated there a moment ago, I
7 think since I have broken these out as far as what I
8 think -- let me even back up a step further.

9 Recognizing that Staff needs time to present its
10 case as well, it is my hope or my intent that by
11 having some of the questions answered sooner rather
12 than later, Staff could start working on its case.
13 Now, to the extent that there are some questions
14 here that perhaps Staff and the companies can agree
15 to push back the response date or for that matter
16 just infer or include them in the testimony, I am
17 willing to entertain any suggestions along those
18 lines.

19 STAFF ATTORNEY: On behalf of Staff that sounds
20 acceptable.

21 STAFF ATTORNEY: Yeah, our goal is to get the
22 testimony on file as soon as possible so if we can

1 work out a way where they intend to answer some of
2 these questions in the testimony and wanted to put
3 off that, that's fine. But our goal is to get the
4 testimony on file as soon as possible. But these
5 dates are fine. But we can hear from like I think
6 Dennis mentioned that he may have some problems in
7 getting some of these questions along or some of
8 this stuff will go into the testimony. And if
9 that's the case, then, you know, obviously we would
10 want the testimony rather than the questions right
11 away.

12 MR. MUNCY: Judge, I don't know. I don't know
13 how to respond. We have got 23 companies. I don't
14 know what we can do about these dates. I don't know
15 that I can make any of the dates right now. I
16 assume that we would certainly use our best efforts,
17 but I mean to the extent that my office, including
18 the people that are doing this and all of the people
19 out there that are working on these various
20 companies and the consultants, I mean I just don't
21 know what's possible. But I do know that, take me
22 out of the loop, I do know that if I start burning

1 up all of the resources of my staff to do stuff
2 related to the data requests, the testimony is not
3 going to get done.

4 JUDGE ALBERS: One of the thoughts I toyed with
5 before coming in here was testimony being filed on
6 April 16 and all of the remaining DRs being answered
7 on April 23, the following week.

8 MR. SMITH: Judge, I understand your ruling and
9 I am not trying to re-argue it, but as Mr. Fodor had
10 said earlier, for example, looking at Number 7
11 having to do with long distance bills and Number 8
12 having to do with internet bills and getting the
13 average, you know, monthly, now is this average for
14 the customers that are taking that service in a
15 subgroup or is it -- you know, we don't keep those
16 records. People -- phone companies don't have a
17 reason to know how the guy's phone bill, his long
18 distance bill, is fluctuating up and down. They
19 take the data off of the tapes, they process it and
20 they send it out and the money gets paid in.

21 This is going to require -- I am not sure
22 that we have disclosed -- this is going to require a

1 lot of work to go back and get each month's bills of
2 long distance bills and internet bills and then
3 start calculating the average for each one of these
4 in order to furnish this to the Staff. I mean, I am
5 not arguing. I am trying to give you the magnitude
6 of the problem here.

7 JUDGE ALBERS: Well, I will be honest with you,
8 I struggled with these, too. 1.07 and 1.08,
9 Mr. Madiar and Mr. Stanton, is there an alternative
10 that would be acceptable to you, at least on a
11 temporary basis?

12 STAFF ATTORNEY: Your Honor, really we are not
13 trying to make any burdens on the parties. We just
14 would like the information. And it just sounds to
15 Staff as that they don't want to provide the
16 information because of what it will take them to go
17 through to provide it. And if there is an
18 alternative, we are open to suggestions, given that
19 it is their client, they are familiar with their
20 processes. But we would like to have some
21 information, that's all.

22 MR. MUNCY: Judge, I do believe that there is

1 -- again. I am not going to argue with your ruling.
2 I believe there is a real problem under the CPNI
3 rules that this is not -- I think some of these
4 other companies it is not lawful for them to give
5 that information to us nor for us necessarily to
6 provide it to the Commission.

7 JUDGE ALBERS: Well, I am glad you mentioned
8 that because I had a thought about that when I was
9 in the room there, and I meant to say this earlier.
10 And to the extent that there is specific argument
11 that anyone wants to make regarding any of these
12 that was not made earlier, please do so.

13 Now, I am just not familiar with the CPNI
14 rules.

15 MR. MUNCY: Well, they protect what information
16 companies can give out about customers, you know,
17 any customer-specific information, and it would
18 involve anything that's related to their bill or
19 anything like that. That is protected information
20 which you are prohibited from giving to anyone else
21 without the customer's permission. That's the
22 reason when, you know, somebody wants to change long

1 distance carriers or something or other and the
2 customer has to agree if his calling patterns and
3 all of that stuff can be given to someone else.

4 JUDGE ALBERS: I mean, I understand the basis.
5 My point is simply, I don't know, are there
6 exceptions for regulatory purposes, for government
7 exceptions, so to speak? I just don't know.

8 MR. FODOR: The local exchange carrier is not
9 supposed to have the information because it is a
10 separate company's information. For purposes of
11 my -- the Tonica information is not supposed to be
12 accessible to the Tonica company local exchange
13 operation. They are asking for something we are not
14 supposed to do. We have it only because we do the
15 bill in Keefe, and we are not allowed to use it for
16 any marketing purposes. I mean, we wouldn't have it
17 if we weren't doing their bill in Keefe, just like
18 we don't have it for those customers that have
19 picked AT&T as their interexchange carrier.

20 MR. MUNCY: And one example, although I didn't
21 bring the one that didn't have all the pages, the
22 one from McDonough that refers to Winns, Winns is a

1 company that is different that does -- and it is not
2 in McDonough. It is in Mid-Century or whichever one
3 I gave you. Mid-Century is not doing that. One of
4 the other companies has the stuff homed in their
5 area and they do the billing. And while Mid-Century
6 might have the right, might have an ownership
7 interest in Winns, that company as a company does
8 not have access to that information, and it is my
9 belief that Winns would violate the law.

10 JUDGE ALBERS: To handle that.

11 MR. MUNCY: To hand over that information to
12 Mid-Century.

13 MR. SMITH: Well, and it is a non-regulated
14 service, too.

15 JUDGE ALBERS: Mr. Stanton, Mr. Madiar, were
16 one of you going to say something?

17 STAFF ATTORNEY: I am sorry, Your Honor. I
18 didn't want to interrupt the other gentleman. All I
19 wanted to say was what Staff is looking for, and I
20 think the questions are fairly, you know, they
21 reveal -- we are just looking for an average. We
22 are not trying to look into, you know, Mr. Smith's

1 or Mrs. Anderson's particular charges. We are
2 asking for an average and by the specific folks that
3 we named. We are not asking them to look at AT&T.
4 The theory is that Oneida, the local exchange
5 carrier, provides basic service, regular local
6 service, and then Oneida Network Services is also
7 the long distance carrier. So we are looking at the
8 nexus to the overall bill because the bill would be
9 one bill.

10 MR. SMITH: But that's a subset of all of the
11 customers.

12 STAFF ATTORNEY: And that's what we are -- we
13 are just looking for that information. And that's
14 quite simply how it is.

15 MR. MUNCY: You should be asking the same
16 question to all of the other people who are
17 interexchange carriers there. There are dozens, you
18 know.

19 STAFF ATTORNEY: Again, it is not customer
20 proprietary information. This is an average number.
21 We are not asking for if you have 400 customers,
22 individual customer's bills. We are asking for the

1 average by customer plat. So I see no privacy or
2 customer proprietary information issues because, you
3 know, quite often carriers do or the FCC collects
4 data on a general scale and it is not granular. So
5 we see no privacy issues. And I think to the extent
6 the parties are saying, you know, why they think it
7 isn't or why we don't need, I think we are just
8 looking for them to answer the question if you have
9 it. If you say you don't have that information,
10 then say it in the question. I mean, that's the
11 response that we are looking for. And what I am
12 hearing is it is hard knowing whether we should have
13 it or not and that's already been decided.

14 JUDGE ALBERS: Well, something you just said
15 there, okay, one, I appreciate being better apprised
16 of the CPNI requirements. Something you just said
17 there, Mr. Stanton, if a company responded to the DR
18 that they didn't have that information, that would
19 satisfy your concerns or your request?

20 STAFF ATTORNEY: What we are truly after is if
21 they send out a bill to Mr. Smith and they have all
22 those charges and they collect all that for them,

1 they have got that information and they are able to
2 average it, pure and simple. That's all we are
3 looking for. We are not -- if that's how they send
4 out their bills to their customers, that's what we
5 are looking for. And the example I used before was
6 Henry County. When Henry sends out a bill, it has
7 Geneseo Telephone Company as the long distance
8 provider on the bill and it also has the internet
9 service provider which in that case would be
10 Geneseo. So they total all of that up. We are just
11 trying to look for the averages, that's it. So they
12 have got this information, they send out the bills.

13 JUDGE ALBERS: So all you want is the average,
14 period?

15 STAFF ATTORNEY: Yeah, all we want is the
16 average for 2003 and then what we have got within
17 the finite number of months we have had this here.

18 JUDGE ALBERS: How is that different, though,
19 from what's being asked under Subsection E of the
20 prior question?

21 STAFF ATTORNEY: Well, sometimes they have got
22 different types of calling plans like a flat rate or

1 something. But if you would want to strike that,
2 some of that out, you know, we were just trying to
3 figure out, you know, more specifically what kind of
4 bells and whistles they offer with a calling plan
5 and things like that.

6 JUDGE ALBERS: Well, now Subsection E, though,
7 doesn't appear to be limited to calling plans.

8 STAFF ATTORNEY: Right. That would be the line
9 at the end, if you looked at your phone bill, what's
10 the total amount that you owe. And then all we were
11 looking for, all A, B, C and D tried to do, is break
12 it down by particular services and if they had like
13 a line item charge for a 411 call for three-way
14 calling.

15 JUDGE ALBERS: Okay. But having heard that, it
16 would seem to me now that they could answer
17 Subsection E.

18 STAFF ATTORNEY: Yeah.

19 JUDGE ALBERS: And not answer 1.07 and 1.08 and
20 thereby avoid concerns about the confidential
21 information.

22 MR. SMITH: E is our bills. 7 and 8 are

1 services of other companies.

2 STAFF ATTORNEY: This breaks it down into
3 subsets but it doesn't get to the individual level
4 of one customer's bill like Mr. Anderson or John
5 Doe. It doesn't get to that level. It gets to by
6 exchange and by, you know, separate classifications
7 and then within a subset of that, but you still
8 don't get down to, you know, the level of individual
9 bill.

10 JUDGE ALBERS: Well, I don't think anybody --
11 from what I am hearing from you at this point,
12 Mr. Stanton, is that you are looking for an average,
13 an average by exchange for what a customer pays.

14 STAFF ATTORNEY: For a class of customers, yes.

15 JUDGE ALBERS: Okay. A class of customers,
16 okay, and the class is being defined as residential,
17 single line, business, multi line business and
18 Centrex.

19 STAFF ATTORNEY: Right.

20 JUDGE ALBERS: Okay. Now, if they answered
21 that, if that's what you are looking for at the
22 heart of all this, why do you also have 1.07 and

1 1.08?

2 STAFF ATTORNEY: The reason why is we don't
3 know how they are going to present that particular
4 type of answer for E. They may just limit it to
5 basic service and they may not include all of the
6 bells and whistles. You know, they may not include
7 the long distance in there or the internet stuff in
8 1.08. So we were looking to break it out that way.

9 In other words, to slice and dice it
10 thinner but certainly not getting down to the level
11 of individual customers. So, in other words, there
12 is an overall classification and then slice it
13 thinner and thinner but still you don't get down to
14 the individual level.

15 MR. SMITH: The easiest thing is these
16 companies are not long distance carriers; they are
17 not internet providers. They are LECs. I mean, we
18 are spilling over into non-related businesses.

19 JUDGE ALBERS: I understand that. On the other
20 hand, I understand Staff's interest about total
21 impact.

22 STAFF ATTORNEY: Just one caveat, Oneida is

1 both a local exchange carrier and a long distance
2 and an IXC.

3 MR. SMITH: That's not true.

4 MR. MUNCY: Not true.

5 STAFF ATTORNEY: I looked it up on the system.
6 They have a certificate for it.

7 JUDGE ALBERS: Well, I am not -- okay. Be that
8 as it may, whatever the Commission's records can
9 confirm or deny.

10 STAFF ATTORNEY: Let me correct that. Oneida
11 Exchange Telephone doesn't have that. It is Oneida
12 Network Services. My error, which is Docket 04-199,
13 and Oneida Telephone Exchange being 04-0200.

14 JUDGE ALBERS: But would Oneida Network
15 Services, would it be offering local service in the
16 same exchange as the Oneida local exchange carrier?

17 MR. SMITH: No, it's a CLEC in a different --

18 JUDGE ALBERS: Right.

19 MR. FODOR: Your Honor, if I could make one
20 point, circle back to the statute that we are
21 working under here, might help you with some
22 guidance. We are talking about economic impact,

1 significant adverse economic impact of users of
2 telecommunications services generally. So to the
3 extent that .07 and .08 are asking for internet,
4 internet is not a telecommunications service. I
5 think it is irrelevant for that reason. And
6 telecommunications services, this is a petition by a
7 specific company, whether or not they have an
8 affiliate. We believe the relevance is limited to
9 the company that's filing the petition.

10 JUDGE ALBERS: I understand that. I also
11 understand the point that Staff is making, though,
12 and that's that in the end the customer pays "X"
13 dollars and Staff wants to consider whether or not
14 "X" dollars plus whatever it would cost for LNP is
15 an unduly economic burden, has an adverse economic
16 impact. And I am not saying right now whether or
17 not looking -- strike that.

18 In light of this most recent discussion, I
19 think the companies can answer E by exchange, what
20 is the average total monthly telephone bill which
21 would include whatever precedes the total, the
22 biggest number at the bottom.

1 STAFF ATTORNEY: Would that include long
2 distance or -- whether that includes long distance
3 or internet or not just as long as it is the raw
4 total?

5 JUDGE ALBERS: The raw total. And I don't
6 believe from what I have heard that would require
7 the companies to get any additional information from
8 any third company that they might bill for. It
9 would seem that would be information the company
10 already has. They could simply run a mathematical
11 calculation as to the averages then.

12 Now, if someone wants to present argument
13 later that it still would violate some
14 confidentiality provision, please let me know. But
15 in light of what I have heard, I don't think at this
16 point then that 1.07 and 1.08 need to be answered.

17 MR. MUNCY: Thank you.

18 MR. SMITH: Yes, thank you.

19 JUDGE ALBERS: I am still willing to consider
20 other dates for submissions of these DR responses,
21 because I agree that the main thing is to get
22 testimony filed so the ball can keep rolling.

1 STAFF ATTORNEY: Judge, you are inclined not to
2 require answers to 1.07 and 1.08 by April 12?

3 JUDGE ALBERS: Or any other later date, yes.

4 MR. MUNCY: I guess I don't know exactly what
5 to say about the scheduling part of it. I suggested
6 April 16 as a filing date. And just simply from my
7 office's perspective and what I know the work that
8 has been done by the various people who are going to
9 be witnesses, I made that suggestion as a date that
10 I thought we could make if we had to do no work, no
11 work in regard to the data request.

12 STAFF ATTORNEY: Your Honor?

13 JUDGE ALBERS: I am listening.

14 STAFF ATTORNEY: On 1.07 and 1.08 I am not
15 trying to as far as, you know -- in terms of the
16 request for the first sentence of 1.07 and 1.08, it
17 doesn't seem unreasonable to Staff that they can
18 actually answer that but they don't need to actually
19 then give us the average number. I think they could
20 tell us who has elected to have these guys as their
21 long distance provider, if they have got internet
22 service with, you know, Winns or whoever outfit it

1 is. I think they have got that information
2 available to them.

3 JUDGE ALBERS: Why would that be relevant,
4 though, in determining the total impact on
5 customers?

6 STAFF ATTORNEY: To the extent that, for
7 example, Oneida is both a local exchange carrier and
8 a long distance carrier, if they were trying to use
9 an input of transport and transit costs, they would
10 say that the local exchange carrier would be billed
11 by the long distance carrier for transport,
12 transport costs. If the company is both a local
13 exchange carrier and a long distance carrier, then
14 that cost is not something they would perhaps maybe
15 incur.

16 MR. MUNCY: Judge, that's back to the comment
17 earlier when we were discussing the network. What
18 they are saying, they don't understand.

19 STAFF ATTORNEY: You know, it is getting late.
20 So if you want to take them out, 1.07 and 1.08, then
21 that's fine.

22 JUDGE ALBERS: The ruling stands.

1 STAFF ATTORNEY: Okay. Very good.

2 MR. MUNCY: So, Judge, I don't know what to
3 suggest. If you are going to direct us to answer by
4 the dates that you have indicated, I mean I believe
5 that in order to comply with that ruling I have got
6 to stop the testimony process and start the data
7 request process. And I don't feel comfortable
8 sitting here this afternoon until we get a little
9 bit deeper into that process of knowing what date
10 then the testimony could be filed. I am interested
11 in doing this as quickly and as easily as possible,
12 and I am certainly not intending to delay. I am
13 just looking at what can be done. So I don't know
14 what to ask you to do in regard to scheduling at
15 this point in time.

16 MR. SMITH: I certainly need more time, Judge.
17 I know we need to keep a hole there a couple weeks
18 in July, but I would like to even have more time
19 than Mr. Muncy had proposed for filing the direct
20 testimony and time beyond that for answering the
21 data requests, solely because I think Staff is going
22 to find it more useful. And I believe they

1 indicated this earlier, it is going to be more
2 useful to have the testimony than it is to have some
3 of this information off the data requests. So from
4 a priority standpoint, the testimony is going to be
5 more important. We probably ought to have 30 days
6 for the data requests.

7 JUDGE ALBERS: I don't think we can afford
8 that.

9 MR. STANTON: This is Tom Stanton. I would
10 just point this out. I think when we started this
11 status hearing, the companies had mentioned that
12 they thought that these cases would go along the
13 same lines as the previous five cases. I mean, they
14 can correct me if I am wrong, but I would anticipate
15 the same information that was in the other cases
16 that we did, there would be similar information that
17 would be in the testimony of the companies in this
18 case, you know. So I think a lot of the work has
19 been done. Perhaps I am wrong, but I think a lot of
20 the work has been done, you know, previously, so it
21 may be the case that, in other words, we are not
22 starting from scratch here, is I guess my main

1 point. I would just point that out.

2 MR. MUNCY: I certainly agree that we are not
3 starting from scratch and it is certainly my
4 intention to do the cost studies the same way that
5 they were conducted in the first round. They are
6 going to be conducted the same way this time and
7 that information will be submitted but, gentlemen,
8 there is -- this all has to be done by individual
9 companies and their consultants and so on and so
10 forth and then, nonetheless, this stuff takes time
11 and you can only crank out so much.

12 MR. SMITH: Well, the numbers are different
13 from company to company.

14 MR. MUNCY: Yeah, they differ from company to
15 company.

16 JUDGE ALBERS: I appreciate that, but I also
17 have to weigh the fact that the gentlemen on the
18 phone have to respond to all of the companies, so.

19 MR. SMITH: Judge, you know, I guess we are
20 looking at a schedule here.

21 JUDGE ALBERS: I mean, setting aside discovery,
22 Mr. Muncy's schedule looks reasonable to me. Having

1 to plug the discovery in --

2 MR. SMITH: Well, I would like to have at least
3 to the 23rd to do my direct testimony, Judge. I am
4 going to be out all next week.

5 JUDGE ALBERS: When was the first of your cases
6 filed?

7 MR. SMITH: Filed? May -- or I am sorry, March
8 4.

9 JUDGE ALBERS: Okay. That doesn't buy us much
10 time.

11 MR. FODOR: I was going to suggest the same
12 thing since I am the tail on this thing. You don't
13 have to put my dates with them if you don't want
14 them. I still have three of them that haven't
15 filed. It is my intention to file testimony shortly
16 after my petitions, but I am a month behind. So you
17 can give an extra month to my schedules and not
18 burden these Staff people with mine.

19 JUDGE ALBERS: Okay. If we moved direct -- how
20 many companies do you have?

21 MR. SMITH: Ten.

22 MR. MUNCY: Twenty-three. Judge, you have

1 already got the data requests and the dates. I
2 guess I would be representing, particularly with
3 some of these very small companies that just don't
4 have any employees, I will use absolutely best faith
5 and get the consultants to do what they can. But if
6 there is only so many people around there who have
7 access to the information, you can only do what they
8 can do.

9 JUDGE ALBERS: Well, I will tell you what. I
10 don't like doing this, but I am having a hard time
11 seeing any other way around it. If we bumped the
12 company's direct testimony to April 20 and responses
13 to the DRs to April 26, that's better than it is
14 now. And if there are some specific problems with
15 discovery, please advise Staff counsel accordingly
16 and perhaps the two of you can work out something.

17 MR. MUNCY: So is that April 26 on all of the
18 data requests?

19 JUDGE ALBERS: Yes.

20 MR. FODOR: All of the ones that you said to
21 answer by a date?

22 JUDGE ALBERS: Yes.

1 MR. SMITH: And Mr. Fodor talked about maybe
2 voluntarily dismissing and refiling these to start
3 the clock over, but that would defeat, you know, the
4 interim order.

5 MR. FODOR: Well, we could only do that if we
6 could somehow get Staff to change their mind on the
7 interim order thing.

8 STAFF ATTORNEY: I think we can talk about
9 that. If you guys want to talk about that with us,
10 we can probably come to agreement to get it done.

11 MR. SMITH: It is a way to get another month.

12 MR. FODOR: If we had interim relief during
13 pendency of the case as long as that got done by May
14 24, I am sorry, it seems like we could. I only have
15 one so I don't have as big a burden as Dennis. But
16 if we all worked offline with our petitions
17 withdrawn and we all decided we are going to refile
18 on a date, whatever the date was --

19 MR. SMITH: Yeah, voluntarily withdrew without
20 prejudice.

21 MR. FODOR: And we could start our six-month
22 clock over for everybody. But we couldn't do that

1 without the interim relief. I was just throwing it
2 out to Mr. Smith.

3 MR. SMITH: Yeah. I think it is a great idea
4 if everybody would work on it because it would give
5 us more time.

6 MR. FODOR: You have been here and you know
7 what's going on.

8 JUDGE ALBERS: Uh-huh. Mr. Muncy?

9 MR. MUNCY: Well, I guess I am willing to think
10 about it. I want to think through a little bit
11 about the process and everything else. I mean, this
12 --

13 JUDGE ALBERS: Mr. Stanton, Mr. Madiar?

14 MR. SMITH: Thirty days is critical at this
15 point in light of -- so I, you know.

16 JUDGE ALBERS: Tom, Eric?

17 STAFF ATTORNEY: I am sorry, what was the
18 question?

19 MR. FODOR: What if we refile with testimony
20 and we agreed on a date, withdrew everything else
21 and I know Dennis hasn't said yes, but this is maybe
22 my proposal. That way we buy back the month that we

1 have lost. If we get you guys on board with the
2 interim relief, I think we could agree to do that.
3 I think it would make the whole set of proceedings
4 go easier for everybody, including the Judge.

5 MR. MADIAR: This is Eric Madiar, I am sorry.
6 That sounds like it will work but, you know, we are
7 going to have the same DRs. So I guess we will try
8 and look at this like another bite at the apple.

9 MR. FODOR: No, no, I would assume that the
10 same rulings that the Judge gave us would be the
11 rulings. We would all know that. And if anybody
12 tried to do something different, the Judge would
13 look cross-eyed at us and say no, my ruling today
14 and he would just read it off of the transcript from
15 today.

16 STAFF ATTORNEY: I just wanted to put it on the
17 record. That's all.

18 MR. SMITH: I am with Mr. Fodor. I will go
19 along with that if Staff -- but you have got to
20 understand, guys, that when we refile and ask for
21 interim relief, you wouldn't object to that.

22 STAFF ATTORNEY: Right. If we can come to

1 agreement and that's the process, then that's all
2 right.

3 JUDGE ALBERS: Do we need this in the record?

4 MR. SMITH: I like it.

5 JUDGE ALBERS: Do you like it this way? I was
6 simply going to suggest that if that's the course, I
7 don't have an objection to what's being discussed
8 here. I can be assigned to all of them again,
9 assuming they are assigned or filed, you know, about
10 the same time. I can issue a ruling rather quickly
11 upon them being filed, asking for any responses or
12 objections to the interim relief being requested.
13 If there is some, a proposed order would go out
14 right away. If there isn't, I mean an order would
15 go up to the Commission.

16 MR. MUNCY: I mean, I don't know that I want to
17 decide anything today but I mean I want to
18 understand from the Staff that they, not only would
19 not object, but would agree to interim relief if
20 this was done. I mean, I would like to understand
21 what we are doing as far as whether we are making
22 any progress on really buying anything.

1 MR. FODOR: Well, that was the premise of my
2 proposal, if Staff will agree not to oppose and
3 Mr. Muncy is adding in actually to agree to the
4 granting of the interim orders.

5 MR. SMITH: Without prejudice.

6 JUDGE ALBERS: That's my understanding as well.
7 The interim order would simply dismiss without
8 prejudice. And the interim order, whether it is
9 this docket or a future one for each company, would
10 by no means predispose an ultimate outcome.

11 MR. FODOR: If Staff was there.

12 MR. STANTON: Like I said, that's something we
13 can talk about. We are not prepared to make that
14 decision now. I think that's something you guys and
15 Eric and I should get on the phone and have that
16 conversation.

17 JUDGE ALBERS: Here is my suggestion then. I
18 will go ahead and read into the record today for
19 these dockets we have now before us the schedule as
20 Dennis Muncy proposed it with the two modifications
21 we made, and then we have got to decide this very
22 quickly. Are you available for a brief status

1 hearing tomorrow afternoon by phone if you would
2 prefer just to determine whether or not this
3 alternative is acceptable?

4 MR. SMITH: I am in the car. Let me ask one
5 question, and then I want to get to answer yours.
6 Can you get -- how soon can you get a dismissal
7 order without prejudice? That's like a couple weeks
8 away?

9 JUDGE ALBERS: The soonest I can get a
10 dismissal order before the Commission would be at
11 its regular open meeting on April 13.

12 MR. SMITH: Okay.

13 STAFF ATTORNEY: Would it be possible to set a
14 short status hearing maybe on Monday or Tuesday,
15 preferably Tuesday?

16 MR. SMITH: Well, tomorrow I am going to be
17 traveling. I can pick up the cell phone and try to
18 call in and I am willing. I already said I am
19 willing to go along with this. So I don't want to
20 hold up the progression of the negotiations on this.
21 This seems perfectly reasonable to me. Dennis is
22 the one who wants to think more about it, and the

1 Staff is not prepared to agree to this. We really
2 need a quick decision, I think, from the Staff and
3 from Mr. Muncy if this is going to work for
4 everybody.

5 JUDGE ALBERS: I agree.

6 MR. SMITH: So I am willing, if there is a
7 number, I will call in while I am going down I65 in
8 Alabama somewhere and try to listen in, but I don't
9 want to slow this thing down by my absence.

10 MR. MUNCY: Judge, I think I need to talk to my
11 clients.

12 JUDGE ALBERS: I understand. I don't blame
13 you.

14 MR. MUNCY: This will take more than one phone
15 call.

16 JUDGE ALBERS: I imagine. Probably about 23.

17 MR. FODOR: Well, I will just say I am
18 available Monday, I am available tomorrow. I am
19 available Monday, I am available Tuesday. We don't
20 know whether Judge Hilliard is going to continue
21 Tuesdays.

22 JUDGE ALBERS: You can appear by phone if you

1 get a break. We can work with this.

2 MR. MUNCY: Well, when do you want to have it?

3 JUDGE ALBERS: I think it depends on you and
4 when you can talk to your clients.

5 MR. FODOR: And how long Staff needs.

6 MR. MUNCY: I think it would be safer to set a
7 conference call for Tuesday.

8 JUDGE ALBERS: I am out of the office Tuesday
9 morning, so Monday afternoon?

10 MR. MUNCY: Monday afternoon, yeah.

11 STAFF ATTORNEY: That's fine. So what do we
12 think we are deciding by Monday afternoon?

13 JUDGE ALBERS: Okay. It is my understanding
14 that by Monday afternoon we will know if we are
15 going to use this schedule for the pending dockets
16 or --

17 MR. SMITH: Dismiss and refile.

18 JUDGE ALBERS: Or, yes, the parties will
19 voluntary move and they can do so on the record, if
20 they prefer, orally for simplicity, voluntarily
21 dismiss each of the pending dockets. They will be
22 dismissed without prejudice, assuming the Commission

1 goes along with this. Right now I can't think of
2 any reason why they wouldn't.

3 MR. SMITH: No.

4 JUDGE ALBERS: And then the companies can
5 refile the same petitions. I think Mr. Fodor
6 indicated possibly file it with testimony which is
7 an option to consider. If that is the course, it is
8 my understanding that between now and Monday the
9 three of you and Staff would determine whether or
10 not Staff would be on board with interim relief.

11 MR. MUNCY: I think that's a necessary part of
12 it.

13 JUDGE ALBERS: I won't disagree with that.
14 However, if Staff does oppose interim relief, if the
15 three of you still want to voluntarily withdraw
16 these -- just listen, you know, I am willing to
17 commit on my end to immediately upon filing set a
18 date for responses to any objection to any interim
19 relief, put a proposed order up, interim order up.

20 MR. MUNCY: But in regard to the schedule, just
21 so I understand, we have on the schedule that I
22 handed out, the only change is the testimony date to

1 April for the ILECs to file April 20 and then you
2 said the discovery requests pursuant to your ruling,
3 just those that you said needed to be answered,
4 would be answered by April 26.

5 JUDGE ALBERS: Yes.

6 MR. SMITH: And one other condition of refiling
7 I think we made clear is that the Staff would have
8 the right to respond or to file the same data
9 requests and we get the same rulings. We would
10 basically be right where we are today, except with
11 more time and a little more breathing room in the
12 schedule. And we would work on answering according
13 to your ruling today. So I think all of that would
14 be terrific.

15 JUDGE ALBERS: Assuming no one comes in with a
16 legal argument, for example, as to why a particular
17 data request is not appropriate, yes. Essentially,
18 if I hear the same arguments for and against, I will
19 make the same rulings.

20 MR. MUNCY: What time do you want to have the
21 status hearing?

22 JUDGE ALBERS: Whatever is convenient for you

1 gentlemen.

2 MR. SMITH: You know, early is fine with me.
3 How early do you want to do it?

4 JUDGE ALBERS: I am free all day Monday.

5 MR. SMITH: Dennis, do you want it in the
6 afternoon?

7 MR. MUNCY: I would like to have not only
8 tomorrow but Monday morning if I can't find people
9 tomorrow and talk to people. So 1:30 or so is fine.

10 JUDGE ALBERS: Okay.

11 MR. FODOR: Gary, you know that's 2:30 your
12 time in Florida.

13 MR. SMITH: Yeah, but I am in central time.
14 There is a river in the panhandle that is central
15 time zone, but thanks for reminding me.

16 JUDGE ALBERS: For the record I will read in
17 the rest of the schedule that Mr. Muncy provided
18 since I don't believe that was ever put in the
19 record.

20 ILEC direct testimony is due April 20.
21 Following the receipt of DRs on April 26, Staff
22 direct testimony would be due May 13. All ILECs

1 would file rebuttal on May 25. Hearings for these
2 cases would commence on June 1.

3 STAFF ATTORNEY: Judge Albers, this is the
4 first time we are hearing the rest of the schedule.
5 We had cranked out, you know, direct testimony 4/20,
6 and then the 4/26 answers to the DRs, but are you
7 saying they file testimony on 4/26, Staff files
8 testimony on May 13?

9 JUDGE ALBERS: Yes, I was unaware that you had
10 not seen this schedule.

11 STAFF ATTORNEY: We have not seen the schedule.

12 MR. MUNCY: We were just reading it.

13 JUDGE ALBERS: That's okay. I just didn't
14 realize it hadn't been shared earlier. I am not
15 criticizing you. Mr. Stanton, what did you say
16 about May 13?

17 MR. STANTON: There would be no way that we
18 could file testimony on May 13 if they file
19 testimony on 4/20. They answer these initial
20 discovery requests on 4/26, and I would anticipate
21 once we see their testimony we may have some more
22 discovery. And, you know, we probably wouldn't be

1 able to file testimony until the beginning of June.

2 MR. SMITH: As Dennis said, you know, sort of
3 under his breath, that doesn't really fit with the
4 time clock and I think that underscores the reason,
5 you know, where Troy's proposal, you know, is the
6 only really workable solution. We have to expedite
7 a lot of things here.

8 MR. STANTON: Why don't we do this? Why don't
9 we keep the direct and the answers to the discovery
10 requests. We have a status hearing scheduled for
11 Monday. Why don't we hold off everything until then
12 rather than setting out a schedule now? Keep the
13 4/20, you know. That's the date that the carriers
14 file direct testimony. We will keep the 4/26 date
15 that the carriers respond to the discovery requests
16 pursuant to his order.

17 JUDGE ALBERS: Mr. Stanton, I am going to go
18 ahead and provide you with the rest of those dates
19 so you can be aware of what's being contemplated
20 here.

21 MR. STANTON: Okay. So 4/13 you said?

22 JUDGE ALBERS: 5/13. ILEC rebuttal testimony

1 May 25. The hearings would commence on June 1, just
2 take them in numerical order as they were filed. We
3 will set a particular date or time, rather, for the
4 first one Monday.

5 MR. MUNCY: Judge, can I? I don't care how
6 they are done. There are witnesses that are common
7 for certain companies, some of them from out of
8 town. I would think maybe we could schedule those
9 specific cases later, so that if Mr. Korte (sp) is
10 testifying for four companies, he can do that on one
11 day and somebody else can do it on another day.

12 JUDGE ALBERS: That's fine, that's fine.
13 Simultaneous briefs on June 23. I would issue 30
14 some proposed orders on July 21. Briefs on
15 exceptions due July 30. Replies to exceptions due
16 August 9. And the Commission would have to act on
17 them, I believe the date is, August 24.

18 MR. SMITH: Judge, just so that the record is
19 clear, I am not sure that the gentlemen on the
20 phone -- I don't know if you read June 1 through 4
21 and June 7 through 11 with four hearings per day so
22 it is really two full weeks of hearings.

1 JUDGE ALBERS: Thank you, yes. Mr. Stanton and
2 Mr. Madiar, did you get all those dates in? Did you
3 get those dates?

4 STAFF ATTORNEY: Yes.

5 JUDGE ALBERS: And I am just going to emphasize
6 that, given what time we have to work with, I don't
7 think at this point there is a whole lot of playing
8 we can do with these dates beyond what we have
9 already done.

10 Are there any other questions or concerns
11 about the schedule or anything else today?

12 STAFF ATTORNEY: One proposal would be to get
13 rid of replies to exceptions and have one brief
14 only.

15 JUDGE ALBERS: Replies to exceptions can be
16 waived.

17 MR. FODOR: Waived unilaterally by you or by
18 the parties?

19 JUDGE ALBERS: I have to check on that, to be
20 honest with you.

21 MR. FODOR: I don't have the rules with me. I
22 mean, you could set a short ridiculous date like two

1 days like somebody else did to us in another docket.
2 It's been done.

3 JUDGE ALBERS: Is there anything else for the
4 record today?

5 MR. MUNCY: No.

6 JUDGE ALBERS: No, then these matters are
7 continued to April 5 at 1:30 in the afternoon. All
8 right. Thank you, everyone.

9 (Whereupon the hearing
10 in this matter was
11 continued until April 5,
12 2004, at 1:30 p.m. in
13 Springfield, Illinois.)

14

15

16

17

18

19

20

21

22